

No. 15280

United States
Court of Appeals
for the Ninth Circuit

MILES H. ROBINSON,

Appellant,

vs.

R. W. STEVENS, et al.,

Appellees.

Transcript of Record
In Four Volumes

FILED

Volume III

APR 24 1957

(Pages 865 to 1266) PAUL P. O'BRIEN, CLERK

Appeal from the United States District Court for the
Eastern District of Washington,
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(Testimony of Miles H. Robinson.)

Mr. Rosling: Well, I will read the question again:

Q. What was there about the letter of March 14, 1951, which led you to the conclusion that they took it upon themselves in an arrogant and entirely unjustified manner——

The Court: There is one missing link here, I think, in this type of cross-interrogation. He hasn't yet said that he so testified. You haven't asked him that, have you? Are you reading from a deposition here?

Mr. Rosling: Yes, I was reading from a deposition. I will go back and do it over again.

Q. (Reading):

“Q. As a matter of fact, you did avail yourself of this grievance committee setup in the state association, did you not?

“A. I knew they took it upon themselves in an arrogant and entirely unjustified manner to so regard it.”

Did you not so testify? A. I think I did.

Q. Now, will you tell me, Dr. Robinson, what there was about their action which led you to the conclusion that they were acting in an arrogant and entirely unjustified [1382] manner?

A. Well, they were unjustified because their action was totally in violation of all the constitutions and bylaws of all the organizations concerned, and when you act in gross violation of constitutions and bylaws, you are arrogant.

Q. You are stating your opinion, are you not, that it was in violation of the state constitution?

(Testimony of Miles H. Robinson.)

A. You asked my opinion.

Q. Very well. I just wanted to be sure it is an opinion.

When you received that letter of March 14, 1951, which is Exhibit No. 67, you answered it on April 9, 1951, our Exhibit No. 83. Do you recall the contents of Exhibit 83, 4-9-51?

A. I would like to see it.

The Court: 83 is admitted, yes.

The Clerk: 83-A.

Q. (By Mr. Rosling): I hand you Exhibit 83-A.

A. Yes?

Q. Do you recall it? A. Yes.

Q. And in that letter, did you not express your satisfaction of the grievance committee in accepting these letters as the lodging of a complaint?

A. No. [1383]

Q. On two occasions on the first page, and I believe it is in the first paragraph, did you not say that, "I am very glad that the state is taking an interest"? A. I will read you what I said.

Q. Very well, you read it.

A. (Reading): "I am glad that the state society is taking an interest."

Q. And down a half a dozen lines, you repeat that sentence, "I am glad," the second time?

A. Well, the next "glad" is: "I am glad, even though it is my belief that the officials of our local county society simply committed one more action in violation of our constitution when, as I gather

(Testimony of Miles H. Robinson.)

from your letter, they referred the dispute to the State Grievance Committee.”

Q. Now, attached to this letter is a statement which is dated December 29th, but in the context of your letter you refer to it as a summary for use in court? A. Yes.

Q. I wish to read a paragraph or so from that on the first page toward the bottom:

“After this, I repeatedly warned Mr. Brooks and Mr. Edwards that because of this unjust attack upon me, which the Edwards had instituted, I would have to drop the Brooks as patients, inform other responsible [1384] members of the family of the syphilitic condition, and turn them over to the public health department.”

Do you recall writing that? A. Yes.

Q. (Reading continued):

“To both Mr. Brooks and to Mr. Edwards I suggested that they come to see me and bring the Grievance Committee’s letter with them so we could work out a better solution. It was perfectly obvious that unless they changed their attitude, a workable doctor-patient relationship would be impossible and I would lose the trade of seven people in three related families, all of whom I had treated in the past and which had brought me a total income to date of \$182.50.”

Do you recall that? A. Yes.

Q. One more paragraph I would like to read——

Mr. Sembower: Your Honor, I don’t see any reason to emphasize these matters in argument like this, because if counsel wishes to ask him what he

(Testimony of Miles H. Robinson.)

meant or something, there is no denial that this was all written. [1385]

Mr. Rosling: Well, if your Honor please, just a short while ago, within the last day or two, Dr. Robinson specifically stated that he made no statement that he would inform other responsible members of the family. I put it in for that purpose.

Mr. Sembower: That is a conclusion, but I think it is argument, is it not, coming in that way at this time? If he wishes to point out an inconsistency, I have no objection.

The Court: Proceed. I think you can call it to his attention.

Mr. Rosling: One more paragraph:

“A second complaint was then made by Mr. Brooks against me and delivered to members of our society in a manner which I will later describe. In this complaint, Mr. Brooks kept silent about everything I said over the phone relating to my request that they come up to see me and why I would otherwise have to give up their cases. For reasons of his own, he alleged that I simply threatened to expose him and his wife unless he delivered the letter from the Grievance Committee. This is completely false. I was interested in their bringing [1386] me the letter because any discussion we would have would revolve around this letter. It was the concrete evidence of their dissatisfaction with me as their doctor. Furthermore, they could damage me by showing it to their friends and acquaintances. If they were not sufficiently grateful to me for my past

(Testimony of Miles H. Robinson.)

services to bring the injurious letter to me, there would certainly be no hope of an amicable settlement and no object in their coming to see me. I had no intention of rendering medical service to them at prices which they could control by making complaints to an unconstitutionally acting Grievance Committee composed of my medical competitors.”

Do you recall writing that sentence?

A. Oh, yes.

Q. Now, this was composed approximately December 29th of 1950? A. That’s right.

Q. That is only a matter of what, two months after the happening of these events?

A. Yes. [1387]

Q. Why, Dr. Robinson, in writing this summary of the situation for use in court wasn’t there any reference made of any kind to the syphilitic condition of Mr. Brooks and the fact that within two years prior thereto there had been a negative Wasserman recently reported?

A. Well, you have two questions there. You first ask me why I didn’t mention syphilis. I was quite chary of mentioning the word “syphilis” in a letter which would be distributed around.

Now, your other question was something about a negative Wasserman previously. Well, that has to do purely with a fairly complicated medical opinion as to the man’s present condition. I simply didn’t go into that, just as I didn’t mention a number of things in that letter. [1388]

WALTER H. ROBINSON

called and sworn as a witness on behalf of the plaintiff, was examined and testified as follows:

Direct Examination

By Mr. Sembower:

Q. Will you state your full name, please?

A. Walter H. Robinson.

Q. And where do you reside, Mr. Robinson?

A. 6712 East Schlarret Avenue, Vancouver, Washington.

Q. You are an attorney? A. Yes.

Q. Are you a member of the bar of [1389] Pennsylvania? A. I am.

Q. And a member of the Washington bar?

A. Yes, sir.

Q. Mr. Robinson, what is your relationship with Miles H. Robinson, the plaintiff in this case?

A. I am an older brother.

Q. In May of 1951, did you know about any troubles in Walla Walla?

A. I knew a little about it. He had written me a few letters and I think we may have had a phone conversation, and I had a very limited acquaintance with the situation, just some general somewhat vague knowledge of the situation.

Q. Had you written your father in Pennsylvania anything about what little you did know about this situation, as you testified?

A. I never wrote my father about this until after receiving a phone call from my father. Prior to that

(Testimony of Walter H. Robinson.)

time, I never wrote or in any way discussed with my father this situation, because I felt my brother had talked with me on a somewhat confidential basis about a personal difficulty. My father wasn't very well at the time.

Q. What was the condition of your father's health at this time? [1390]

A. He had had a mild cerebral thrombosis on January 1st of 1951. He was recovering very nicely, able to walk around and do his kind of chores up in the farm up in the mountains, but nevertheless he was, while recovering very well from this light stroke, nothing like his usual rugged self. He was sort of shaky as a result of this illness that he had on January 1st.

Q. Mark Robinson, of Tunkhannock, Pennsylvania, is also a brother of yours, is he not?

A. Yes.

Q. Did you receive a long-distance telephone call from him in June of 1951?

A. I hesitate about the date, but that, I think, is correct, yes, I did.

Q. Where were you at the time you received this call?

A. I was in my office in Vancouver, Washington.

Q. Was your father also on the line during that conversation?

A. Yes, sir. He spoke very briefly at the beginning of it. The connection at the start was poor and almost immediately my brother took over, with my father listening in on the wire, and then my father

(Testimony of Walter H. Robinson.)

discussed the situation later at the end of the conversation.

Q. What was the subject matter of the conversation?

A. My brother, Mark, with my father listening in, called to [1391] say that my father had received a letter from a physician here in Walla Walla, a Dr. Pratt. They read the letter to me over the phone. They said this indicates some kind of rather serious controversy out here and he began to tell me about the contents of the letter and asked me—and I said, “Well, I know something about this.” And they were surprised to learn that. And the rest of the conversation was all about this difficulty here and their concern about it.

Q. I see. I show you, Mr. Robinson, Plaintiff’s Exhibit 114, which is a letter dated May 24, 1951, from Wallace A. Pratt, M.D., to Dr. Lewis N. Robinson at Swarthmore, Pennsylvania, and ask you if that appears to be the letter that was read to you over the telephone that day?

A. Yes, this is the letter.

Q. Thank you. And now from the sound of your father’s voice, not asking you what he said, of course, I am just asking the sound of his voice and your familiarity with the nature of his speech, and so on, and his manner of speech, did you draw any conclusions as to the condition of his health and the state of his mind at the time of the call?

A. Well, his mind was clear without any doubt and I knew that from previous correspondence with

(Testimony of Walter H. Robinson.)

him on other subjects. I knew that he was able to take care of his [1392] horse and do other things up on the mountain place there, so his health was not real fragile but it was what you would expect from a man who had recovered from a slight stroke.

Q. Did he seem to be agitated?

A. He was very agitated, very anxious, and deeply upset.

Q. How long about did the conversation take, if you recall?

A. At least fifteen minutes and probably twenty.

Q. Then after the conversation, Mr. Robinson, what did you do, if anything, with reference to this general matter?

A. I made up my mind to come to Walla Walla to try to find out what this seemed to be about. I knew very, very little about it, a certain few contacts with my brother and some letters, mostly letters. My father asked me to look into this and see what it was about.

I, as a lawyer, had represented my father from the time I was admitted to the bar in 1935 until I went in the Navy in 1942 or '3 and again after I got out of the Navy for a little while. We were very close and he asked me to look into this and find out, if I could, what it was about. I think he had heard something from my brother, Miles, but I was interested in hearing if there was another side to the difficulty and what it was about.

Q. And what steps did you take then to inquire into it?

(Testimony of Walter H. Robinson.)

A. So within a few days at the most, I think, I drove my car [1393] to Walla Walla. It must have been about 11:00 o'clock in the morning—no, I may have arrived the night before, I am not sure. But I chatted with my brother a little about this. I had a very small collection for our office to make here, along about 11:00 in the morning I said I was going out and make the collection. Not in this town, but near here, and I used that, frankly, as an excuse to get in touch with Dr. Pratt. Dr. Pratt did not expect me to come. Probably, he didn't even know I existed. I went to him——

Q. By the way, I was going to ask you, was Dr. Pratt a close friend of the family's, to your knowledge?

A. I don't see how he could have been. My father had visited my brother here once or twice, but very briefly, and he certainly wasn't a close friend, no. He might possibly have met my father, I don't know.

Q. Well, then, go right ahead. You got in touch with Dr. Pratt?

A. I called him on the phone and said who I was. I told him I was a lawyer, I said I was Miles' brother, that I was concerned about this situation, my father was concerned, and could I chat with him, could I talk with him and find out what this was about.

He said sure. I think I suggested lunch and he said he was busy, to come up to the office after lunch. [1394]

(Testimony of Walter H. Robinson.)

So at 1:00 o'clock I came to his office. I said I wanted to know what this was about and would appreciate it very much if he could give me his point of view.

The Court: When was that?

Mr. Sembower: That was about——

Q. When was that, if you recall?

A. The time of day, sir?

The Court: Oh, I mean approximately the date?

Q. (By Mr. Sembower): Approximately the day?

A. Our office keeps records of long-distance phone calls, and this phone call from my father was on May 29, 1951. I made the trip a few days, perhaps a week, after that time. So it must have been roughly about June 5th or 6th. I wish I could be more exact. It was within a relatively short time.

The Court: That is sufficient for my purposes. I wanted to relate it to other events here.

Q. (By Mr. Sembower): Dr. Pratt in his deposition also doesn't remember the exact date, but about this same time.

All right, Mr. Robinson, I believe that office was in the Drumbheller Building, was it not?

A. Yes, sir.

Q. It was next door, as a matter of fact, to Dr. Robinson's office, wasn't it? [1395]

A. Yes, I think I had never seen my brother's office before. I didn't enter it at this time, but was curious and I could see his name on the door down the hall, but I did not enter his office.

(Testimony of Walter H. Robinson.)

Q. Yes. Well, now, then, as nearly as you recall, what did Dr. Pratt say to you and what did you say to him?

A. Well, after some preliminary in which I said who I was and that I was asking for help; that my father had gotten in touch with me; that there seemed to be some difficulty out here; that Miles' family were very naturally interested in him and interested in his welfare, and my father's impression from this letter was that something rather serious was going on out here, so I asked him for his view of what the situation was and indicated that I wanted it for personal reasons, for family reasons, and did not want to make the basis of what I would learn from him the foundation for any legal proceedings or anything of that kind; that we just wanted to know if there was a medical problem or a health problem or anything of that kind, or a legal problem, what it was about; that I was not counsel for Miles and was sure I never would be, but from a family point of view, we wanted to know.

And with some, I think, restraint and reserve, Dr. Pratt told me in a way that I thought was a friendly [1396] and kindly way his views. He said that there had been a controversy here with relation to the medical service setup. I think he told me that there had been some controversy with respect to a particular patient who had objected, I think, to a dollar and a half bill.

That the medical people here had some views

(Testimony of Walter H. Robinson.)

about this and had, I think, expressed them. I think there was some response to this complaint, perhaps a letter or something, and he indicated that Miles had reacted in a way they thought—well, he had shown resentment and he reacted in a way that they didn't like, that the medical profession didn't like, and——

Q. Did he mention the grievance committee?

A. Yes, he did and said that a complaint had been filed before the grievance committee, that it had processed it, had, I think, written some kind of a letter indicating that, oh, something about the dollar and a half bill maybe wasn't a proper bill, that it should all be overlooked.

Q. And did he say anything about Miles' mental health?

A. Well, yes; wanted to know—I wanted to know what is this about, how this come about, and again with some restraint and reserve Dr. Pratt indicated he felt that Miles was suffering from I think he called it, a persecution complex, something of that kind. And we [1397] discussed this some and I wanted to know more about it and what possibly could be done about it.

Q. If you recall, did he use the term "persecution complex" as a layman might or in a medical sense? What impression did you get of that?

A. I think he is an able doctor and I think he used it as a medical man would use it, meaning a form of mental illness, is the way I took it.

(Testimony of Walter H. Robinson.)

Q. What did you say to him in response to these remarks, if you recall?

A. Well, I was there with a view to exploring any possibility of conciliation. I didn't appreciate or realize how far the dispute had gone at that time and perhaps conciliation was no longer possible. So in order to——

Q. Did he tell you at that time Miles had already been expelled? Did he tell you that he had already been expelled?

A. I don't think so. I think he said that he was under an order of suspension or that proceedings were under way. I don't recall that he flatly said he had been expelled, but I knew from the conversation that he was either already suspended or that some proceedings were under way.

I'm afraid I didn't answer your earlier question.

Q. Well, go ahead, then. I probably interrupted you. I was [1398] asking you what you had said to him in general, if you recall.

A. That wasn't it. It isn't important. I won't bring it up. That wasn't the next to the last question, whether I missed a——

Q. I don't recall it, either. We might just pass that.

Had you seen your brother, Mr. Robinson, seen much of your brother in the period immediately prior to the conversation you had with Dr. Pratt?

A. No; practically nothing whatever. I was busy in my practice in Vancouver, my brother was busy here. I had been in the Navy and hadn't seen him

(Testimony of Walter H. Robinson.)

all those years and we practically never have been in the same state in the last ten years and I hardly ever see him. I had some letters from him.

Q. Had you seen him occasionally, did you see him during those ten years, however?

A. Oh, yes. I got out of the Navy for Christmas or something like that, home for leave, and I would see him for a couple of days, and saw him in Walla Walla once, I think, and once in Portland before this developed in June of 1951.

Q. On those occasions, had you noticed anything that you regarded as abnormal about Miles?

A. No; all members of the family think that some of the [1399] other members of the family are, you know, we are all different, but no——

Q. Were you inclined to believe what Dr. Pratt told you about his mental condition, and so on?

A. Well, I gave it a good deal of credence. I was impressed by Dr. Pratt. He was an older man and had been apparently a leader of his profession here. He told me about a good many letters and some kind of a campaign and some things that my brother had done here and it worried me, and Dr. Pratt's view was that there was a certain element of mental illness involved, or I think his word was 'persecution complex,' and he had been here and watched Miles and knew whatever the local situation was, and I had no reason, certainly not at that time, to doubt his word.

Q. Did he have any specific——

A. I was impressed to some degree, yes.

(Testimony of Walter H. Robinson.)

Q. Did he make any suggestions that you recall, things that might be done or you might do?

A. Well, I was looking for a way out of a controversy and hoping for a conciliation and, if there was some medical problem or mental illness or something like that, as Dr. Pratt felt, that then I wanted to—"Well, can we do anything along that line? You are a doctor, tell me, Dr. Pratt." [1400]

Q. Did he make any suggestions?

A. And he said, "Well, this thing is really within the field of psychiatry," and I said, "What can be done along that line?"

"Well," he said, "I don't think much can be done along that line, not just by having your brother seek out private advice or something of that kind. But if anything could be done and if the situation were to develop worse, and so on, why, some form of hospitalization might be necessary."

Well, we didn't go into that very far.

Q. Did he say that anybody in Walla Walla had taken steps to have Miles committed to a mental institution or anything like that?

A. No, no one had taken steps. He raised the possibility as to whether it might become necessary. No, no one had taken steps.

Q. Did you get any other impressions now, Mr. Robinson, from your conversation with Dr. Pratt that you haven't related?

A. Oh, I felt that he was co-operative and he had given me the interview for which I asked, and we left it this way: I said, "Well, I would like to know

(Testimony of Walter H. Robinson.)

what further developments transpire here. I will keep in touch and will you keep in touch with me and let me know what happens here?" [1401]

Q. Did he seem to be exasperated with Miles in any way?

A. Oh, there was an element of exasperation. He spoke as a friend but also, yes, there was an element of exasperation and some talk about the rather large practice Miles had down the hall, and in Dr. Pratt's view it wasn't being handled the way some people thought it ought to be and he was a little exasperated about the practice and about the fact that there was a controversy here and wasn't all at peace.

Q. Did you ask him if there were any other doctors in the community who might be influential in the matter?

A. Yes sir. I wanted to know who were the leaders in the profession in the community here because if what Dr. Pratt had indicated to me about some illness were so or if the thing turned worse that way, then I wanted to know who to get in touch with with the leaders here and moreover, I still was hoping that there would be some form of conciliation and hadn't realized how far the thing had gone at all and I thought, well, if we know who the president of the organization is, we can get in touch with him and find out what his point of view is and maybe everybody can be happy.

So I asked the name, I said, "Who is the president of the organization and who are its officers, perhaps I would have occasion to write or get in

(Testimony of Walter H. Robinson.)

touch with them," [1402] and he gave me the names a little later.

Q. And so far as you know, that was the occasion for his writing you the letter of July 1st, '51?

A. Yes, sir.

Q. Which is Plaintiff's Exhibit 286, in which he states:

"Dear Walter:

"Greatly relieved to have had that talk with you. Regret Miles opened up the item. It must have made the visit unpleasant."

And then he puts here:

"President, Walla Walla Valley Medical Society, Dr. Morton Tompkins.

"President, Medical Service Bureau Dr. Emory King."

That must have been in response to your request?

A. That was in response to my request for the official leaders of the society. I never got in touch with them but I thought that possibly it would be good to know who they were.

Q. What did you do then after the conversation was completed?

A. Well, I was not a volunteer, I didn't want to come into the picture, and I had a duty to my father, so, of course, I reported to him about as I have told it here.

Q. Did you see your brother after you had the conversation, [1403] that is, while you were still in town?

(Testimony of Walter H. Robinson.)

A. Oh, yes. From Dr. Pratt's office I went right back to Miles' residence where I had lunch out there with him.

Q. Did your father appear to be upset about the information which you sent him?

A. Yes, he was. He was very upset when he received the original letter from Dr. Pratt and my report didn't make him any less anxious. I more or less repeated what I had learned from Dr. Pratt, and I am sorry to say it didn't relieve his mind.

Q. Did you or any of the members of your family take any steps about Miles, that is, steps about his mental condition, as you had heard it related and so on?

A. No, certainly not. On the contrary, we relied on him both for medical advice in connection with my father's illness; my father later became more ill and we definitely relied upon him for professional advice and also to some extent in our family business. We have a small family business and we turned to him for advice on that.

Q. I believe you are a co-executor of your father's will, are you not?

A. Yes, sir.

Q. And your father added a codicil to that will, I believe?

A. That is correct. [1404]

Q. If the members of the family had thought that Miles was in need of psychiatric assistance, would they have acted, do you believe?

A. Yes, indeed, they certainly would.

Q. Did you ever reveal, Mr. Robinson, with whom you had talked in Walla Walla about this matter?

(Testimony of Walter H. Robinson.)

A. No, I never revealed it until about last December of 1955. I was under a lot of pressure to state who the doctor was, but I had the feeling, rightly or wrongly, that I had gone there on a confidential basis for personal and family help and so I refused to say until last November, and at that time the doctor's name was already—through some other means, Miles had found his name or perhaps one of the pretrial depositions it disclosed the name. I don't know how exactly he got the name. Last December he came to me and said, "I want to know more about this Pratt business," and insisted that he know about the letters that had gone back and forth between Dr. Pratt and me. He knew they existed, I think in the pretrial examination or something of that sort. So then I said, "You know the man's name, and so on; what do you want to know else?"

Q. Did you have any further contacts with Dr. Pratt by mail or personal visits or telephone that you recall?

A. In December, I gave my brother my file, because, as I [1405] said, he had already obtained on deposition everything that was in it and I kept the file myself, not an office secretary, and yesterday going over a file that I have with my father I found an additional letter from Dr. Pratt which had slipped in my father's file instead of filing it properly in the right file, so there is one additional letter. The others, I understand, are already in evidence.

(Testimony of Walter H. Robinson.)

Mr. Sembower: I ask that this be marked Plaintiff's Exhibit——

The Clerk: 512.

Mr. Sembower: ——512 for identification.

I will say for the record it purports to be a letter from Wallace A. Pratt to Walter H. Robinson, dated July 9, 1952.

Mr. Tuttle: No objection, your Honor.

The Court: It will be admitted, then.

Mr. Sembower: I ask that it be admitted.

(Whereupon the said letter was admitted in evidence as Plaintiff's Exhibit No. 512.)

Mr. Sembower: I will read this letter into the record, Plaintiff's Exhibit 512:

“Dear Walter:

“Thank you for your kind letters and [1406] assurances that you will refrain from telling Miles about me writing your father.

“Yes, the fat is in the fire and the local profession seems to be incensed by having to take time off, as well as to employ counsel.

“I haven't changed my mind as to the unfortunate affliction besetting Miles. He continues to be involved in many other small legal controversies. Win, lose, or draw, this action will engender much hatred and ill feeling in the profession and the community.

“Do hope your father is regaining his health and will not be caused undue concern. May add Miles and the family have practically withdrawn from

(Testimony of Walter H. Robinson.)

social contacts about town and with their close neighbors. I understand he is selling the Russell Creek farm.

“Again thanks and hoping this finds you well and happy.”

Mr. Tuttle: Would you give me the date, please, on that?

Mr. Sembower: July 9, 1952.

Q. Mr. Robinson, after Miles had learned that it was Dr. Pratt who had written his father, did you learn additional things which caused you to modify your earlier [1407] decision not to reveal any of the correspondence?

Mr. Tuttle: If the Court please, I object to that.

The Court: I think the form of the question may be somewhat objectionable. If you are going to have him testify that he came to the conclusion that Dr. Pratt wasn't acting in good faith or something of that sort, but you can bring out what he found out, if anything, additional.

Mr. Sembower: Yes, that is what I would like to ask.

The Court: And the way he found it out, who told him about it, if it is admissible.

Q. (By Mr. Sembower): Did you find out anything subsequent to these visits you have related which indicated to you that Dr. Pratt wasn't acting in good faith?

A. I had for me a serious problem of conscience as to the extent to which I should disclose information received from Dr. Pratt on what I had repre-

(Testimony of Walter H. Robinson.)

sented to him, was a confidential basis when I went to him asking for help, and for it must have been two or three years now I have refused to disclose that. Finally, Dr. Pratt's name came out, but not through me. I was then told that on deposition, Dr. Pratt had——

Mr. Tuttle: If the Court please, that would be hearsay.

The Court: Yes, I think it would be.

Q. (By Mr. Sembower): Well, then, let me read, Mr. Robinson, from Dr. Pratt's deposition dated—well, this is the [1408] deposition taken in this case in response to cross-examination presented by Mr. Rosling. He states:

“A. Well, of course, I only talked with his brother. The brother said that he had had——

“Q. That he?

“A. That Miles had been temperamental or something of that sort and even as a boy he had tantrums and he said that they had to put him in a strait jacket, he was so uncontrollable. I remember that distinctly, his brother telling me that.”

Did you then learn that Dr. Pratt had made such a statement in a deposition?

A. Yes, and the statement that he had been in a strait-jacket was absolutely and utterly false. I never said that, absolutely never said it, and, furthermore, he never had been in a strait jacket or any such thing at all.

And when I realized that I was misquoted in this deposition, I felt that I was entitled to defend my-

(Testimony of Walter H. Robinson.)

self, that I had never said any such thing, and that the privilege, which perhaps in my mind, anyhow, existed for the benefit of Dr. Pratt, was completely gone and destroyed when I was so misquoted. I never said that he was in a strait jacket, it was the furthest thing [1409] possible from the truth that I said it or that he was, and, frankly, it made me angry to be misquoted that way and all the rest of the conversation seemed to be in the deposition anyhow and the privilege, if any, gone, and I felt, well, all right, here is the file and you can read the letters, and so on. And, sure, it was Dr. Pratt, I admitted it last December, 1955, for the first time.

Q. Did you learn, Mr. Robinson, that Dr. Pratt also had written a letter to the American Medical Association about Dr. Robinson, his belief that Dr. Robinson's mental condition was impaired?

A. I was informed that.

* * *

The Court: Did you talk to any other doctors here in Walla Walla about Miles' case?

A. No, sir, on no occasion.

The Court: Did Dr. Pratt suggest that you talk to anybody else?

A. I doubt that, sir. It is four years now, isn't it, or [1410] five? I asked him the names of the leaders of the profession here, and I am sure he did not discourage me from getting in touch with them, he gave me the names.

The Court: I see.

(Testimony of Walter H. Robinson.)

A. But I don't think that he asked me to get in touch with them. I am sure he didn't. He didn't discourage and I am sure—it is hard to remember.

The Court: Yes, all right, that answers my question.

A. If I wanted to, it was all right.

* * *

MILES H. ROBINSON

plaintiff herein, having previously been duly sworn, resumed the stand and testified further as follows:

Cross-Examination

(Continued)

By Mr. Rosling:

Mr. Rosling: Shall I proceed, your Honor? [1411]

The Court: Yes.

Q. (By Mr. Rosling): Dr. Robinson, I am handing you a few exhibits which I have selected and which I may question you about.

Mr. McNichols: Are those all in evidence, Mr. Rosling?

Q. (By Mr. Rosling): First, Dr. Robinson, I will refer to Exhibit No. 83, which is the letter of April 9, 1951, from yourself addressed to Dr. Rownd, who was the secretary of the state grievance committee. Do you have that letter before you?

A. I have that letter. It is marked 83-A.

Q. Yes, 83-A, I meant to state.

Dr. Robinson, if you will turn to the second page of that letter and to the middle paragraph, the

(Testimony of Miles H. Robinson.)

larger one, there is a statement: "I enclose all material subsequently prepared on the disputes in question."

I notice the word "disputes" in the plural. Do you find the place? A. Yes.

Q. Now, later on in that same paragraph I find this: "In summary presents the essentials, I believe, of my position in the disputes growing out of our secret grievance committee's activities."

That word "disputes" also is in the plural. Do you find it? [1412] A. Yes.

Q. I will ask you, Dr. Robinson, whether the word "disputes" as you used it in that letter indicates both the complaint filed by Brooks against yourself and the complaint of yourself against the state grievance committee—against the county society, pardon me?

A. Probably have to check all the enclosures carefully. I can tell you offhand what I think I referred to.

Q. What did you refer to?

A. Well, let's see, this is April the 9th, 1951, and the disputes that had been taking place were, I would say, three in number. There was a dispute over the grievance committee letter; I mean there was a dispute with the Edwards, apparently; there was a dispute with the Brooks; and there was a dispute with the grievance committee. It seems to me that would cover everything.

The Court: You mean your dispute with the grievance committee?

(Testimony of Miles H. Robinson.)

A. Yes, your Honor.

The Court: I see. All right, go ahead, Mr. Rosling.

Q. (By Mr. Rosling): Now, in that letter, Dr. Robinson, you enclosed a number of corrections with reference to the November 21st transcript. Do you recall that? A. Yes.

Q. And the one which you emphasized a day or so ago was the [1413] phrase, "I jumped the gun," as against, "he jumped the gun"? A. Yes.

Q. I will ask you, Dr. Robinson, are you familiar with Gregg shorthand?

A. To a very limited extent.

Q. Is it not correct that the word "he" is indicated by a character of a small circle?

A. One, or the other of them, is a circle, as I recall. I don't write shorthand.

Q. And the word "I" is also a circle, but a little bit larger circle?

A. It seems to me that they are both some kind of circle, but I couldn't tell you what the difference is.

Q. Well, isn't it quite likely that even a competent stenographer in the rush of taking down evidence could confuse the little circle with the large circle when it came time to transcribe?

A. I wouldn't know anything about that.

Q. Will you again turn to exhibit 83-A, particularly to the last four lines there? A. Yes.

Q. Which reads as follows:

(Testimony of Miles H. Robinson.)

“I am determined, however, to collect for damages rendered and in the future to practice [1414] free from meddlesome interference.

“Trusting that this resume of my position and of my intentions may prove of some use to the association, I am

“Sincerely yours.”

A. Yes.

Q. Dr. Robinson, why did you think that the expression of your determination, your intention to collect for damages, would be of use to the state association grievance committee?

A. Well, my resume I referred to all the rest of the letter and everything that was in the enclosures. I didn't refer simply, or perhaps at all, to any collection for damages.

Mr. Rosling: I'm sorry, would you read the answer?

(Whereupon, the answer was read.)

Q. You did not?

A. Well, I mean as far as being of use to the association goes——

The Court: I don't remember the language now that you quoted, Mr. Rosling.

Mr. Rosling: (Reading):

“I am determined, however, to collect for damages rendered and in the future to practice free from meddlesome interference. [1415]

“Trusting that this resume of my position and of my intentions——”

(Testimony of Miles H. Robinson.)

The Court: Oh, yes, I see.

Mr. Rosling: (Continuing reading):

“——may prove of some use to the association.”

A. Mr. Rosling, in furtherance to your question, the last sentence is a new paragraph, not indicated in your quotation. The first part you read is the end of one paragraph, namely, “I am determined, however, to collect for damages rendered; and in the future to practice free from meddlesome interference.” Then a new paragraph and last paragraph in the entire letter, I say this:

“Trusting that this resume of my position and of my intentions may prove of some use to the association, I am, Sincerely yours.”

Q. Well, one of your intentions was the expressed determination to collect for damages, wasn't it?

A. Yes.

Q. Did you think that the expression of that intention would in any way affect the state grievance committee's opinion in these matters?

A. Well, I said that would prove of some use to the association, and I thought certainly the association would like to know that I considered my predicament so serious that I might have to go to court to extricate [1416] myself.

Q. Dr. Robinson, will you turn to Exhibit No. 41. which is your letter to Dr. Kenneth L. Partlow of November 13, 1950?

A. Yes.

Q. Paragraph four?

A. Yes.

Q. Reading:

“I am equally determined to fight every un-

(Testimony of Miles H. Robinson.)

democratic, unethical, and tyrannical abuse of power exerted by any unscrupulous competitor among my colleagues.”

Did you have any particular competitor in mind when you wrote that sentence?

A. Well, I had one in mind and all in mind, both.

Q. Who is the one that you particularly had in mind?

A. Well, I think I had Dr. Stevens in mind in particular, but I was making a general statement.

Q. Why did you use the word “unscrupulous” with reference to Dr. Stevens?

A. Well, first, he was chairman of an improper committee. I felt that was not scrupulous. I think it is possible I also had in mind that his practice of medicine violated the ethics of the AMA, because he was making money off of medical appliances. [1417]

Q. Isn't it a fact, Dr. Robinson, that you were grinding wheat and selling the product of the flour, the cereal, to your patients?

A. I did grind, I think, as much as thirty five pounds of wheat before we got it in the hands of a retired professor's wife and sold——

Q. And you sold that wheat, that flour, to your patients, did you not?

A. My secretary in the office sold that at cost.

Q. And the proceeds went into your receipts, did they not?

A. I couldn't say where those proceeds went. I

(Testimony of Miles H. Robinson.)

think they amounted to about \$7.00, or something like that.

Q. Altogether, Doctor?

A. I would say so. Not much more than that.

Mr. Rosling: May I have Exhibit No. 304? I think it is one of these right in here.

The Court: Ledger sheets?

A. In furtherance to your question, Mr. Rosling, I now recall that we did get a grocery store, it seems to me, to sell that. They sold a few——

Q. (By Mr. Rosling): I am not interested in sales by the grocery store, I am interested in sales by yourself, Doctor, and my question was confined to that. A. I see.

Q. I will now hand you Exhibit No. 304 and particularly [1418] page 46 thereof and ask whether or not that does not indicate a sale of two pounds of wheat cereal? A. Yes, that does.

Q. What was the charge?

A. Well, let's see, I have never seen this before. This is in the handwriting of my secretary.

The Court: Oh, all that is volunteer information. He asked you a straight-out question.

Mr. Rosling: That is correct.

Q. My question was how much?

A. It shows here a charge of \$5.30 for an office visit, injection, and two pounds of wheat cereal.

Q. And that entry of \$5.30 was on one of your ledger cards? A. Yes.

Q. And if it was paid, it would have gone into your treasury? A. Evidently yes.

(Testimony of Miles H. Robinson.)

Q. Doctor, in your direct examination you referred to a meeting with Dr. Berge in Seattle on April 11th, 1951.

A. In what connection or in what document?

Q. In your direct examination, you told us of the meeting you had with Dr. J. H. Berge in Seattle on April 11, 1951?

A. Yes.

Q. Now, I have before me your deposition taken in this [1419] proceeding, and particularly at page 398, I am going to read approximately one page, and then when I am through, I am going to ask you if this is not your testimony at that time:

“Q. He took that responsibility seriously, didn’t he?

“A. Well, he scared me because it sounded to me like Hitler or Mussolini.

“Q. He took that responsibility quite seriously, didn’t he?

“A. I have no idea what his—Well, I take that back. I felt he was acting like a dictator and I guess dictators can take things seriously, as well as we people. He was obviously very serious about the statement.

“Q. Was he, in your opinion, sincere?

“A. No, I thought he was quite hypocritical because he was obviously very anxious to have me attend this hearing of his. He did not have the slightest conception of democratic processes or what our various constitutions meant. He acted extremely subservient to Ralph Neill, and I felt he was noth-

(Testimony of Miles H. Robinson.)

ing more than a flunky of Ralph Neill because that was his entire attitude.

“Q. He appeared to you to be friendly to you, did [1420] he not?

“A. Well, the word isn’t friendly.

“Q. Describe his attitude.

“A. Partly solicitous and officious, is another word, and thoroughly disagreeable in the sense that it just didn’t seem an admirable attitude in general that he had.”

A. What was that word, propitious?

Q. Officious. A. Officious.

Q. (Reading continued):

“Q. Did he appear to be friendly to you?

“A. Oh, yes, he acted very friendly, but I thought that he was being very hypocritical.

“Q. You felt his apparent attitude was a pretense?

“A. Oh, definitely, it was quite obvious to me that he wanted to get this big grievance committee meeting and I think pretended to establish his great, new, powerful committee. It was also obvious he was entirely subservient to the new commercialized trend in medicine.

“Q. Was there anything in that interview with Dr. Berge to indicate that he had any animosity or malice toward you? [1421]

“A. Why, yes. I think the man that treats you with hypocritical fashion will always be suspected of malice.”

(Testimony of Miles H. Robinson.)

That is the end of my quotation, Dr. Robinson. Did you testify in that manner?

A. That seems to me familiar, I think, yes.

Q. Now, Dr. Robinson, I would like to have you tell me what it was that Dr. Berge said or in what manner did he act to give you the feeling that, while he appeared to be friendly, he was actually hypocritical and was not friendly?

A. I recollect quite clearly. He was very indifferent to my complaint about the state committee violating our constitution and bylaws.

Q. Did you think he should pre-judge the matter?

A. And he was anxious, unduly anxious, hurried, in his manner about getting me to this grievance committee meeting, and, therefore, I felt that—I felt that he was not sincerely interested in me or in what was right.

Q. When you said that he did not appear to take any interest in your constitutional questions, did you expect him to prejudge the matter prior to the hearing?

A. I don't see the connection between those two things. I can't answer that.

Q. At page 20 of the same deposition, I find this sentence: [1422]

“I don't think there was any organized conspiracy against me at that time, but doctors can be awfully petty when they want to hurt you, especially medical politicians of the kind that hold offices generally all over the country. Your really good doctor hasn't got

(Testimony of Miles H. Robinson.)

time to be a medical politician. It is just the bums, by and large. Well, I won't say any more."

Did you so testify? A. Yes.

Q. You put Dr. Berge in the class of the bums?

A. I am afraid I do.

Q. Do you have before you a copy of Exhibit No. 92, being your letter of April 13, 1951, addressed to Dr. Berge? A. Yes.

Q. The second paragraph, I will read.

The Court: What number is that, please, Mr. Rosling?

Mr. Rosling: Number 92.

The Court: All right.

Q. (By Mr. Rosling, reading):

"Your statement that Mr. Fullerton has been in charge of all the arrangements of this hearing seriously unsettles my confidence in a fairly conducted hearing. If Fullerton and others of [1423] his ilk, being all avid proponents of insurance medicine, which I think ruins our profession, are to have so much influence, I can guess what kind of treatment I will get based on samples to date."

Now, before I question you about that particular sentence, I want to read one paragraph from Exhibit No. 297, which is the state constitution and bylaws, Section 16 of Chapter VIII, Paragraph (b) having to do with the qualifications of members of the state grievance committee. Reading:

"No two members shall come from the same local component society. Each member shall be one of the respected members of his profession who has

(Testimony of Miles H. Robinson.)

demonstrated from time to time his interest in questions of ethical nature. He shall be an outstanding example of sobriety, integrity, and good judgment in matters pertaining to the welfare of the profession, the interests of the public, and the furtherance of proper physician-patient relationship.”

Dr. Robinson, did you know any members, outside of Dr. Berge, of the state grievance committee personally?

A. It seems to me I knew Dr. Yengling, yes. I knew Dr. Yengling and I think he was on the grievance committee. [1424]

Q. Well, did you have any reason to suspect that the personnel of that committee did not fall within the category as I have just read?

Mr. McNichols: I am going to raise one question about this method of examination, your Honor. I think the witness is going to be confused unless he can be shown by Mr. Rosling when the committee was created with respect to these letters and exhibits.

Mr. Rosling: Well, it is already in evidence that the committee was created prior to this time.

Mr. McNichols: When was the committee created?

Mr. Rosling: The “Redhead” went out on the 16th of October. No, I am wrong in my date—February 16th of 1951, was the date that the rules were finally adopted, or, rather, ten days beyond that period of time, which is prior to the date of this letter.

Q. My question, Dr. Robinson, was whether you

(Testimony of Miles H. Robinson.)

had any reason to believe that the members of this state grievance committee did not fall in the category of qualifications which I have just read to you?

A. Yes.

Q. What? A. Yes.

Q. What was it, please?

A. Well, first, my contact with Dr. Berge. [1425]

Q. Which you have just told us about?

A. Yes.

Q. Anything else?

A. Secondly, Mr. Fullerton, my contact with Mr. Fullerton, who was acting as an agent for these men.

Q. So that you felt that because Mr. Fullerton was making the arrangements for this meeting, that you would not receive a fair and impartial hearing?

A. That was one of my reasons.

Q. Let's go down to the next——

The Court: What sort of arrangements was Mr. Fullerton making? Getting a place for them to meet, a reporter, and so on?

A. All arrangements, was what I understood, your Honor.

The Court: Arrangements for a place of meeting and the facilities for their carrying on the meeting, is that generally correct?

A. I wasn't told entirely what arrangements he was making.

The Court: I have in mind the arrangements that you had in mind that made you think you wouldn't get a fair hearing?

(Testimony of Miles H. Robinson.)

A. Well, I felt that he would probably dominate the proceedings.

The Court: Because he got a hall for them to meet in?

A. No, your Honor, because he was the agent for all the activities that had affected me in this controversy up to [1426] now.

The Court: All right, go ahead.

Q. (By Mr. Rosling): Let's go to your second reason, third paragraph:

"I have already attended one long hearing and given what I think will stand as adequate answers clearing me of alleged unethical conduct in the Brooks affair."

Now, that one long meeting, I presume, was the November 21st hearing? A. Yes.

Q. And you felt that your answers contained in that hearing made it unnecessary for you to appear before the state grievance committee? I mean, you were satisfied to let those answers stand for you?

A. Well, in answer to your last question, yes.

Q. Now, the third reason that you didn't want to appear before the state grievance committee's meeting is contained in the fifth paragraph, which I will read:

"I really cannot spare the time from my growing practice for this kind of thing. It also seems——"

The Witness: "Almost seems."

Q. (Reading continued):

"——the more I stand up for my rights, the more popular I become with the public here. [1427]"

(Testimony of Miles H. Robinson.)

Therefore, I will not attend your hearing on April 22nd, 1951."

The Court: I think the witness had some suggestion about your reading there.

Mr. Rosling: Did I not get it correctly?

A. That's right.

Mr. Rosling: Well, I will read it again.

"I really cannot spare the time from my growing practice for this kind of thing. It almost seems as if the more I stand up for my rights, the more popular I become with the public here. Therefore, I will not attend your hearing on April 22nd, 1951."

Q. Was that at that time a true statement, Dr. Robinson?

A. Yes. May I say, though, to make sure of my answer——

The Court: Just a moment, just answer the question.

Mr. Rosling: I haven't asked any additional question.

The Court: You have answered the question.

Q. (By Mr. Rosling): If counsel wishes to bring out something else, he may.

I now ask you to turn to Exhibit No. 95, which is a letter from Dr. Berge to Dr. Robinson.

Mr. Rosling: This letter has not been read and I ask permission of the Court to read it at this time.

The Court: All right.

Mr. Rosling: It is dated April 17, 1951: [1428]

"Dear Dr. Robinson:

"I have your letter of April 15, 1951, in which

(Testimony of Miles H. Robinson.)

you state that you must refuse to attend the hearing of the above-entitled cause on April 22nd, 1951. You give as your reason the fact that you 'cannot spare the time from your growing practice for this sort of thing.' You also state that these difficulties originated locally and it is not a question of an appeal from a local judicial body, but that it is a question of 'failure of such a body to follow the due process laid down in the covenant of your constitution.' You state you feel it is a matter for the local law courts, rather than for the grievance committee of the local society.

"I must again call your attention to the rules and regulations of the grievance committee of the Washington State Medical Association, which at the present time are binding upon every member of the association. I would like particularly to call your attention to Article 3, and I quote:

" 'The committee shall have the power and authority to summon members of the association to appear before it, either in connection with complaints involving [1429] the member summoned or as witnesses in cases involving other members. The failure of any member to respond to such summons without reasonable excuse shall constitute grounds for the preferring of charges of unprofessional conduct.'

"We are offering you the opportunity to appear at an impartial hearing and to present your grievances and to answer and cross-examine any witnesses who may be present.

"Your statement that Mr. Fullerton has been in

(Testimony of Miles H. Robinson.)

charge of all the arrangements for this hearing is quite in error. Mr. Fullerton is only handling the mechanics of the meeting in the sense of arranging for a meeting place and the summoning of the various witnesses for the Medical Society. It seems right that he should do this in his capacity as Executive Secretary of the Society. His making such arrangements will have no bearing at all upon the conduct of the hearing.

“Please allow me to urge you to reconsider, and I sincerely hope you will attend the hearing on April 22, 1951.”

You received that letter, did you not, Dr. Robinson? A. Yes. [1430]

Q. And after receiving that letter, did you still feel that you would not get an impartial hearing?

A. Yes.

The Court: Is that number 95?

Mr. Rosling: Correct, sir.

The Court: I will take a recess now.

(Whereupon, a short recess was taken.)

Q. (By Mr. Rosling): Dr. Robinson, after having received Dr. Berge's letter of April 17, 1951, Exhibit No. 95, and having his explanation that Mr. Fullerton was only handling the mechanics of the meeting in the sense of arranging for the meeting place, summoning witnesses, and so on, did you still feel that that factor would prevent you from having a fair, impartial hearing before the state grievance committee?

(Testimony of Miles H. Robinson.)

A. I felt that was one of the factors, yes.

Q. Do you have before you, Dr. Robinson, Exhibit No. 205, a letter dated April 15, 1952?

A. Yes.

Q. That letter is from whom to whom?

A. From Dr. Berge to Dr. Tompkins.

Q. Now, when that letter was introduced in evidence, your counsel read only the last paragraph. I will ask you to read that last paragraph again.

A. (Reading): [1431]

“Be assured of our desire to co-operate to the fullest possible extent in this matter. Do not hesitate to call me or Mrs. Lawrence at the Central Office where all our case files are kept.

“Sincerely,

“JAMES H. BERGE.”

Q. Dr. Robinson, did you construe the co-operation referred to there as co-operation in the furtherance of the conspiracy described in your complaint?

A. At what time, Mr. Rosling? I subpoenaed this letter years later.

Q. Well, let's say right now?

Mr. McNichols: I think counsel is asking for a legal conclusion of the witness again, your Honor.

The Court: Well, I think so. I will sustain the objection to that.

Mr. Rosling: Your Honor please, may I state for the record that in view of the witness' testimony here of several days that events which he related as having transpired in Baltimore were attributable

(Testimony of Miles H. Robinson.)

to this conspiracy, I now wish to withdraw any objections and will waive any irregularity in the taking of the Baltimore depositions and will consent, if counsel wishes to do so, that those depositions may be received in evidence in this trial.

Mr. Kimball: We will join in that. [1432]

Mr. McNichols: What does that have to do with the question you just presented?

Mr. Rosling: What?

Mr. McNichols: Are you referring to the question you put to the witness?

Mr. Rosling: No——

Mr. Sembower: Your Honor, that is a most extraordinary suggestion. What does counsel have in mind? We explained to the Court the circumstances there. As a matter of fact, I, myself, have not read the depositions that came in. We did not retain counsel there to marshal the matter through. It is quite possible that they are not in a perfect form. It was a loss to us to go ahead as we did because we already had the interrogatories in and it was pursuant to the notice and counsel objected to it.

The Court: Let me say this, that all this means simply is that objection has been withdrawn, as I understand it, joined by all of the counsel for defendants.

Mr. Rosling: They don't have to put them in if they don't want to, we are merely expressing our consent that they may.

Mr. Kimball: We understand they have been

(Testimony of Miles H. Robinson.)

mailed to the Clerk of the Court and are in the possession of the Clerk now.

The Court: Objection has been withdrawn. That doesn't [1433] mean that you need produce them. I appreciate the fact that the depositions are taken under many circumstances and are taken partly or wholly for discovery and you need not produce them if you do not see fit to do so, and certainly the Court will not draw any inference or raise any presumption because of your not having done so.

Mr. Sembower: I appreciate that, except I am terribly disappointed because I feel that had counsel not objected before, we might have had probative evidence here, and I think it is certainly with bad grace that it is raised at this time.

Mr. Rosling: Well, may I call to Mr. Sembower's attention that his depositions were on written interrogatories; they were not oral?

Mr. Sembower: They were written and we didn't press the point at that time, now for counsel to take this position for some reason that is completely obscure to me is astonishing.

The Court: I don't see that he has put you in any worse position, Mr. Sembower. Your questions were already formulated and they were written questions, were they not?

Mr. Sembower: That is true.

The Court: You wouldn't have gotten any different kind of answers and, so far as I can see, it simply removes the objection. If you want to put them in, you may; if not, you [1434] need not do so.

(Testimony of Miles H. Robinson.)

Proceed with your examination.

Q. (By Mr. Rosling): Dr. Robinson, I am going to recite the names of the state officers as they existed in 1950, '51 and '52, and I would like to ask you if you were acquainted with any of these men.

We have already referred to Dr. Yengling and Dr. Berge.

Mr. Ralph Neill, the executive secretary?

A. At any particular time?

Q. Is it not correct that you first met Mr. Neill at the time his deposition was taken in this proceeding, or in the preceding state court litigation?

A. I couldn't tell you for sure.

Q. Dr. R. A. Benson?

A. I met him at Los Angeles, December 2nd, 1951.

The Court: Pardon me, I have an afterthought also here. Wouldn't it be true that your depositions would pertain, at least primarily, to a question of damages, rather than liability?

Mr. Sembower: I believe they would. I was thinking about it, too.

The Court: It is something that transpired long after the expulsion here, isn't it?

Mr. Sembower: That is true. [1435]

The Court: It might lend some color to the existence of the conspiracy or the actions taken, but I should think it would primarily pertain to the question of damages, which isn't immediately before the Court, anyway, at this time.

Mr. Sembower: Of course, if the parties that we

(Testimony of Miles H. Robinson.)

charged with being conspirators, to perpetuate their activities so that the Doctor is unable to continue, it might be an overt act.

Well, I have had no chance to really think the thing over, I am really nonplussed somewhat because I haven't reviewed whether all of them were obtained or not, but we will study the situation.

The Court: Yes, all right.

Mr. Sembower: Thank you.

Q. (By Mr. Rosling): Dr. Ross Wright of Tacoma? A. I met him at the same time.

Q. At the Los Angeles hearing? A. Yes.

Q. Dr. Kenneth L. Partlow?

A. I don't think I have ever met him.

Q. Dr. W. E. Rownd of Bremerton, I think?

A. I have never seen him.

Q. Dr. M. Shelby Jared?

A. I met him at the depositions.

Q. In this proceeding? [1436] A. Yes.

Q. Dr. Bruce Zimmerman?

A. Never met him.

Q. Dr. Jim Havolind? A. Never.

Q. Dr. Al G. Young of Wenatchee?

A. No.

Q. Dr. Fred Tucker of Seattle? A. No.

Q. Dr. Vern Spickard of Seattle? A. No.

Q. Dr. Bryant, who was a member of the state grievance committee, and I can't tell you right off-hand what his initials are? A. No.

Q. You did have a telephone conversation with Dr. Bryant, did you not?

(Testimony of Miles H. Robinson.)

A. Yes, he called me, but I never met him.

Q. He called you on April 22nd, 1951, telling you the meeting was about to convene and would you come?

A. As to date, it was about then that he called me.

Q. Dr. C. E. Watts of Seattle? A. No.

Q. Dr. Don Corbett of Spokane?

A. No. [1437]

Q. Dr. I. C. Munger of Vancouver?

A. No.

Q. Dr. Robinson, have you any personal knowledge, knowledge of your own, of any act or thing or any document or communication, whether it is oral or written, which is not already in evidence, which in your opinion shows any participation of the state association in this conspiracy?

Mr. McNichols: I think again, your Honor, I am going to object to that question on the basis it calls for a legal conclusion of the witness on what would or would not constitute a tie-in with the conspiracy.

Mr. Rosling: Just asking for his personal knowledge of any facts within his knowledge while he is on the stand, if there is any such.

The Court: I think counsel's objection is to the word "conspiracy," I suppose which may have different legal connotations than the ordinary meaning of the term. Would you mind reframing your question to say any participation in the Walla Walla difficulties of the plaintiff?

(Testimony of Miles H. Robinson.)

Q. (By Mr. Rosling): Dr. Robinson, I will ask you if you have any personal knowledge of any act or thing or any document or any communication, whether writing or oral, which is not already introduced in evidence in this trial, which relates to the Walla Walla Medical Society difficulty [1438] which is involved in this litigation?

A. I have attempted to put in everything that I knew of or had and I know of nothing else.

Mr. Rosling: I have no further questions of Dr. Robinson, but Mr. Kimball has handed me a note that he has overlooked a couple of documents, and may he offer them, your Honor?

The Court: All right.

Mr. Kimball: I will be very brief, I overlooked them at the time.

Q. (By Mr. Kimball): Dr. Robinson, I hand you what has been marked Defendants' identification No. 409 and ask you if you can identify the document? A. Yes.

Q. State what it is, please?

A. It consists of several documents. The first one is the agreement between the Walla Walla Valley Medical Service Corporation and myself, dated February 1, 1949. The second one is an application form by me for membership in the Walla Walla Bureau, dated, or at least—yes, pardon me, dated February 1, '49; and the third one is an agreement between myself and the Service Corporation with regard to service under the veterans' program dated February 1, '49. [1439]

(Testimony of Miles H. Robinson.)

The Court: What is the number of that? Are those all 409?

Mr. Kimball: They are clipped together as 409, your Honor.

The Court: Oh.

Q. (By Mr. Kimball): Doctor, I will ask you if each of those bears your signature? A. Yes.

Mr. Kimball: I ask that it be admitted.

Mr. McNichols: No objection, your Honor.

The Court: 409 will be admitted, then.

(Whereupon the said documents were admitted in evidence as Defendants' Exhibit No. 409.)

Q. (By Mr. Kimball): Dr. Robinson, I hand you also a group of clipped papers, four in number, which have been identified as Defendants' 410, and ask you if you have seen it and can identify what it is?

A. The first sheet consists of application by me for active membership in the Walla Walla Valley Society and the Washington State Medical Association, dated October 6, 1948. The second sheet is a sheet signed by Dr. Johannesson stating that my credentials are okay and a few other notes. The third one is a letter from Dr. Kennedy of the University of Pennsylvania School of [1440] Medicine to Dr. Johnnesson, dated November 12, 1948. The next document is a carbon copy, apparently, from the chairman of the credentials committee of the Walla Walla Valley Medical Society to the secretary

(Testimony of Miles H. Robinson.)

of the University of Pennsylvania Medical School, dated October 12, 1948; and the last paper here is apparently a letter from the Department of Licenses of the State of Washington to Dr. Johannesson, dated November 4, 1948.

The Court: Are those all under 410, are they?

Mr. Kimball: Yes, your Honor.

The Court: In connection with his application for membership in the society?

Mr. Kimball: Yes. I see no reason for marking them separately unless the Court does.

The Court: Well, that is under number 1, there is no objection to it.

Mr. Kimball: Very well, I will offer them as such, and I would like to read one paragraph.

The Court: Exhibit 410 will be admitted, [1441] then.

* * *

Redirect Examination

By Mr. Sembower:

Q. Dr. Robinson, you were asked about your internship at the University of Pennsylvania Hospital. What kind of an internship did you take at the University of Pennsylvania Hospital? [1442]

* * *

Q. Dr. Robinson, did Dr. Parkhurst invite you at one time to return to the Pennsylvania Hospital?

A. Yes; he did, as an intern.

Q. Some questioning was carried on of you con-

(Testimony of Miles H. Robinson.)

cerning squabbles or controversies that you have had with so-called organized medicine in the past.

Dr. Robinson, do you remember any controversies that you have had in the past with organized medicine, as such? A. No.

Q. In one of the depositions given by Dr. Pratt, reference [1445] was made there to a difficulty which you had had, said Dr. Pratt, in Louisville. Do you know to what he may have referred?

A. I can only think he was referring to Nashville, Tennessee, where I was doing research and teaching for three years or four years during the war.

Q. Did you have any medical contacts at Louisville which could give rise to such a controversy?

A. Never.

Q. Now, as to Nashville, which is your surmise that you think he may have referred to, did you have any controversies there which would give rise, or any incidents there which would give rise to controversies with organized medicine?

A. I have nothing that could possibly be called a controversy in Nashville.

Q. From what illness were you suffering while you were at the Pennsylvania Hospital, Dr. Robinson?

A. Well, I had otitis media, which is infection of the middle ear, with a complicating mastoid infection.

Q. Would that be called a bulging ear drum, perhaps?

(Testimony of Miles H. Robinson.)

A. Yes; it was bulging, that is how it started.

Q. Did you overcome that disability?

A. Well, it was a very slow progress, it really took me, I really didn't get over it until I moved to Walla Walla [1446] in '42 and had my tonsils out.

Q. And then did the difficulty clear up?

The Court: He rested up about a year here, didn't he?

A. Yes; your honor.

The Court: He has testified to that before, I recall very clearly.

Mr. Sembower: All right.

Q. Dr. Robinson, during your cross-examination, you were asked about various depositions which were given, statements that you made on depositions. Were you without counsel during part of the depositions which you gave? A. Yes; I was.

Q. Acting as your own counsel?

A. Yes; for a short time.

Q. You were shown, Dr. Robinson, a letter which is plaintiff's Exhibit 13 written by Dr. Balcom Moore to you dated November 21, 1950, and you were asked if this letter was antagonistic and if there were passages in it which impressed you as being particularly revealing of an antagonistic attitude on his part.

I will ask you to look at this exhibit and to point out various passages in it which you regard as being indicative of Dr. Moore's antagonism toward you.

(Testimony of Miles H. Robinson.)

The Court: What is that number?

Mr. Sembower: I think it is 13. [1447]

The Clerk: 13.

A. 13.

The Court: All right.

A. There is the last four lines on page two which I felt classed me with the Communists here. He says the following:

“The ‘bureaucracy on our necks’ has been hung there not by us nor by doctors, but by the asinine laws passed by the people and legislature of Washington State under the communistic and socialistic leaders they choose to follow.”

The Court: You think that classed you as a Communist?

A. Well, sir, it puts me—he complains about my objection to the bureau and I just felt it reflected on me.

The Court: Wasn’t he talking about the people who influenced welfare legislation, the head of the Washington Pension Union, and so on? You don’t think he was referring to that?

A. Well, perhaps I should read——

The Court: I am just trying to get your point of view here. That is the end of the first page?

A. End of the first page; yes. Oh, I beg your pardon, it is the end of the second page.

The Court: Oh, the second page; yes.

A. He goes on to say: [1448]

“To the correction of this is where our energies should be directed. The bureau operations are not

(Testimony of Miles H. Robinson.)

bureaucratic in a governmental sense because policies are set, reviewed, and repealed by the entire voting physician membership and not entirely by their elected representatives.”

Then he goes on:

“The only reason our bureau program, not welfare, is better than state medicine is that it is controlled by us.”

And my understanding all along, your Honor, has been that the bureau was set up to fight the communistic and socialistic tendencies in this state, and I was fighting the bureau, so I felt that kind of pushed me into the class of what he calls here the communistic and socialistic leaders that the people and legislators of Washington choose to follow.

Q. (By Mr. Sembower): As a matter of fact, Dr. Robinson, at this time there was a widespread feeling among the doctors that anyone who was associated with a movement for state medicine or anything of that kind was an anathema to the medical profession, is that not correct?

The Court: That is a very leading question, Mr. Sembower. You are not permitted to lead on [1449] redirect.

Mr. Sembower: It is, that is correct.

The Court: I think you'd better let Dr. Robinson testify. He is fully capable of doing it.

Mr. Sembower: All right.

Q. But do you have any comments with respect to the attitude of state medicine and the doctors, their attitude as reflected by this letter?

(Testimony of Miles H. Robinson.)

A. They felt I was not for state medicine, but it seemed to me that the bureau was as bad as any state medicine could be.

Q. I will read to you the last phrase of his letter and ask you for your comment on that along the line of Dr. Moore's attitude in writing the letter. He says:

"I regret that you——"

The Court: Just a moment. Is this still——

Mr. Sembower: The Balcom Moore letter; yes.
(Reading continued):

"I regret that you feel it necessary to break our united front in this effort."

The Court: Oh, I see.

Q. (By Mr. Sembower): To what did you infer that that related?

A. Well, I knew that he meant that the bureau was, in his opinion, the united front against the socialized medicine as planned by Oscar Ewing and other people under the [1450] Truman administration, and I disagreed with him.

Q. Now, let me ask you about a question that was put to you about Mrs. Brooks and the diagnosis which you made of her.

The term was used there several times by counsel questioning you that you had referred to this as a mysterious neurological ailment. When you used the word "mysterious" in what sense were you using that word?

A. Only that it was a relatively obscure ailment.

(Testimony of Miles H. Robinson.)

Q. Is that a common expression in medical parlance?

A. It is a colloquial sort of an expression among doctors.

Q. And does it have any different connotation from the way the word "mysterious" is used in normal language, if you know?

A. I think so. It isn't a good word; "obscure" is the correct word.

Q. And that was the sense in which you were using that word in this connection? A. Oh, yes.

Q. Some question was raised, Dr. Robinson, about why you didn't refer Tom Brooks' case to another doctor. Why didn't you refer Tom Brooks' case to another doctor?

A. Well, that would be no guarantee whatever that either he or his family or the public would have protection [1451] against the disease, and I have never heard of that being done, actually. If a patient's condition is dangerous to himself and associates and the public, one doesn't just go shopping around town to find some doctor that might be able to persuade the man to do what you think he should do. You do your best and then you simply have to turn him over to the proper authorities.

Q. Had you had any indication that if you did refer Tom Brooks to another doctor, that he would go to that doctor?

A. Oh, I had no indication at all. I had frequently suggested that if there was anything about

(Testimony of Miles H. Robinson.)

my treatment of the case, the cases of both he and Mrs. Brooks, that I would be happy to have them go to Portland or Seattle or any other doctor locally. I specifically said any other doctor locally. Now, that was before all this trouble developed, but that is my standard attitude at any time. I frequently volunteer that with any patient just to be sure that they are satisfied.

Q. Also, Dr. Robinson, you were asked if you found syphilis, traces of syphilis, or diagnosed it in Mrs. Brooks and Tom Brooks, though Dr. Campbell had had them as patients. Would that have any application to the matter of your medical approach to these patients, that Dr. Campbell had had them as patients for awhile and had not diagnosed [1452] syphilis?

A. Well, not really, for the reason that Dr. Campbell was a very fine physician, but I was recently out of training and I expected that I would have a few strings to my bow, or whatever you call it, I would have something that he would not have as an older man, long out of medical school.

Q. That is, you were using an approach to syphilis here which was distinctive, is that what you mean to say?

A. Well, I think it really was distinctive in Walla Walla.

Q. In what manner?

A. Well, I think I probably took more Wassermans on patients than any other doctor in town and I had a very thorough training in the disease and I was interested in it and sorry for these people and

(Testimony of Miles H. Robinson.)

went at it, I think, very earnestly and more so than the average doctor around the country.

Q. Mr. Tuttle brought up in his examination of you, Dr. Robinson, the various sub-categories of syphilis and the degrees of its severity, and so on. How is that related to the diagnosis which you made of these patients?

A. The use of the word "category" is not too good there. Syphilis is no different from pneumonia or any other disease, it has stages and it has manifestations which differ with time and with the patient and with the variance of the organism. That is my answer as regards [1453] the use of the word "categories."

Q. What difference might it have made to you had you found that it was, say, a number 2 case or a number 4 case so far as the severity of the disease is concerned in your approach to the diagnosis and treatment?

A. Well, it really wouldn't have made any difference, because the only treatment, I would say 98 per cent of all treatment for syphilis since I came out of school, has become penicillin, and I know that if I myself had a positive Wasserman, I would take a long course of penicillin regardless of what stage of the disease I was in or what symptoms I had of it. I would do that in any case and I have done that for all my patients with one or two exceptions. There is a special condition of faradic shock you can get into with massive doses of penicillin in cardio-vascular syphilis. They are cured so quickly

(Testimony of Miles H. Robinson.)

there is an overwhelming rush of fluid into the affected part which can be fatal, and that is called the Marchheimer reaction, but it is quite rare in syphilis and not a very important thing any more.

Q. This is a small point, but you were asked the question if you had seen Brooks and Edwards at different places and, as I recall, your answer was you stated that you had seen them a great many places.

In making that answer, did you refer to this week [1454] or did you refer to the particular week prior to the conversations you had with Tom Brooks on Sunday and the Monday event following, or did you mean over the general period of time?

A. Well, I referred over the general period of time and had in mind the fact that I saw them in many different houses, and also during that week I had been out to Mrs. Edwards' house. [1455]

* * *

Q. Dr. Robinson, several questions were asked of you as to when you first had the implication, that is, drew the inference from the situation, that you might be in court on this matter. When did it first occur to you that this might be a matter which would get into the civil courts, as distinguished from procedures of the society alone?

A. I think the first idea of it I had of that was when Dr. Page wrote me his letter of November the 10th or 11th and enclosed the Brooks complaint in which Mr. Brooks said that he had thought that he

(Testimony of Miles H. Robinson.)

might have to sue me. [1456] And at that time I also thought that I might have to go to court, because here was a complaint that had been made a month previously and I knew nothing about it and it was dumped on me, so to speak, right after I filed my formal charges against the secret grievance committee in my letter of November the 7th.

Q. To your best recollection, those are the first times that actual court action occurred to you?

A. Yes; they are.

Q. Either as defendant or plaintiff?

A. That's right.

Q. Dr. Robinson, when you received that telephone call from the person who was acting as baby sitter, or whoever it was, for the Edwards child, were you certain that it was candied sulfa that the person told you the child had swallowed?

A. Yes; I am absolutely certain that that is what I was told at the time.

Q. Do you have any basis for your certainty there?

Mr. Tuttle: If the Court please, we have been into these matters before at length.

Mr. Sembower: That was subject to considerable cross-examination and I think he has stated that that was the case, but I wanted to ask him whether he was certain of it or not. [1457]

The Court: Well, he may answer that. Of course, if you go into the conversations regarding the Edwards matter again, then in fairness I must let them do it again on recross.

(Testimony of Miles H. Robinson.)

Mr. Sembower: Indeed, I wasn't asking him to go into that.

The Court: I don't think we should go over them too much. It has been thoroughly explored. I have no objection to your asking about the certainty about it.

Mr. Sembower: I wasn't referring to the conversation, I wanted to ask him——

The Court: Well, it was the conversation with the person who called him, at any rate.

Mr. Sembower: Yes.

The Court: You may answer that, then, Doctor.

A. Well, the only thing I would have to say on that is that when someone calls up and says that a child or anyone else has swallowed a poison, the one and only thing that the doctor thinks of is what was it that was swallowed, because all treatment and all measures from that point on depend strictly on exactly what was swallowed and the treatment is different for all kinds of different things, and that is why I am absolutely certain I was told it was sulfa because my treatment was based on that.

Q. (By Mr. Sembower): Dr. Robinson, did you ever prescribe [1458] a cathartic like epsom salts in connection with a treatment of a child or a person who had swallowed a cathartic? A. No.

Mr. Kimball: If the Court please, I object to that on the ground it is immaterial to any issue before this Court.

The Court: Well, I will let it stand. He has already answered, he said no.

(Testimony of Miles H. Robinson.)

Q. (By Mr. Sembower): Now, the question has come up several times about whether there was a prescription included in the management of this case which you recommended and the use of "RX" as a symbol.

In your use of symbols, what did "RX" indicate?

The Court: He has testified definitely to that, Mr. Sembower, that in his practice he used it either for treatment or for prescription.

Mr. Sembower: Very good.

The Court: I don't know what would be added by having him say it again, do you?

Mr. Sembower: Except that he would testify that he used it habitually as that.

The Court: He testified to that on direct, that is his practice, that is what he did. That is the way I got it, anyway. [1459]

Mr. Sembower: Very good.

Q. Dr. Robinson, when Dr. Stevens accosted you on the street and first referred to the Edwards matter, did you at that time know that he was a member of the grievance committee?

Mr. Tuttle: If the Court please, we went into all those matters on both direct and cross-examination fully on the street conversation.

The Court: Frankly, I don't remember whether he testified to that or not.

Mr. Sembower: I don't think he has testified.

The Court: He testified that Dr. Stevens told him at one stage that he was chairman of the grievance committee.

(Testimony of Miles H. Robinson.)

Mr. Sembower: Yes.

The Court: He may answer that question, whether he knew it when first accosted about it.

A. I learned it when he spoke to me on that occasion.

The Court: You didn't know it before then?

A. No, your Honor.

The Court: All right.

Q. (By Mr. Sembower): Now, as to the matter, Dr. Robinson, of fees and inquiries, you were asked a number of times whether you believed that fees were a legitimate field of inquiry for a grievance committee and you answered usually yes or no to those questions. Now, what was your [1460] belief with respect to whether fees are a field of legitimate inquiry by a grievance committee?

A. Yes; I feel that, well, almost any matter is a legitimate inquiry of a grievance committee, provided what it does is not in conflict with the constitution and bylaws.

Q. In the facts of this particular situation where the matter of fees arose, did you have an objection, however, to the manner in which fees were approached by this grievance committee?

Mr. Kimball: I object to that on the ground that it is a leading question.

The Court: It is what?

Mr. Kimball: A leading question.

The Court: Oh. Well, I will let him answer. I don't think so.

(Testimony of Miles H. Robinson.)

A. Well, my objection in this case was because the inquiry was by a grievance committee which was secret.

The Court: Your question was did he have an objection.

Mr. Sembower: That's right, did you have an objection?

The Court: Yes.

A. Yes.

Q. (By Mr. Sembower): Now, Dr. Robinson, you were asked about [1461] your statement in one of the letters that you wrote about finding no fault with the Walla Walla Valley Medical Society, and what was your position with respect to that?

A. My position, I had objected to the secret committee and the state medical association took that and turned it into an objection against the local society, which was never my position at all.

Q. Mr. Rosling asked you about what he described as your letter to the court, which was an enclosure in one of your mailings to the trustees, I believe, of the state association. What was your letter to the court, so-called?

A. Well, that was a paper I got up to give my legal counsel just to summarize roughly my views, and I never called it a letter to the court, it was called that by Mr. Rosling or by the state medical association.

I think the thing started out something like this: "The situation that I wish to present to the court is

(Testimony of Miles H. Robinson.)

such and such," and that is just sort of a glorified way—in my own head, I thought if I am going to draw up a summary, I will draw it up as it would be argued before some court and just a casual idea on my part.

Q. At that time, did you have any specific court—at the [1462] time you wrote that, did you have any specific court action in mind?

A. No; except that I had been consulting attorneys in Walla Walla about it and shown them all my papers.

Q. About the statement, Dr. Robinson, which you prepared for the expulsion meeting, when was that prepared, the writing as it exists among the exhibits of this case?

A. That statement was mimeographed some weeks after the expulsion meeting.

Q. And what was the occasion of your preparing that writing?

A. I anticipated that I would have to submit that to the AMA at the hearing on my appeal and all I had during the meeting were some rough notes that I had made up and then during the meeting I further formulated those notes to fit with what was happening during the meeting, and then finally I had it mimeographed some weeks or it may have been a month after that.

Q. Did you actually read that statement at the hearing itself?

A. I didn't read that statement.

(Testimony of Miles H. Robinson.)

Q. What did you use as the basis for your remarks at that hearing?

A. Well, all I had was rough notes at the meeting and several loose pieces of paper.

Q. Do you have those notes still? [1463]

A. I think I do, but they are in Baltimore, I'm sorry to say.

Q. They are not available here and you don't anticipate they will be available during this case?

A. I looked for them, but I can't find them.

Q. Now, in that statement you made reference to the matter of a vote being taken and you predicated various statements on a vote being taken. You also testified on direct examination that you didn't anticipate any expulsion action at that meeting.

Will you explain what you meant by the reference in that statement to a vote being taken?

A. I am not absolutely positive whether I wrote down on my rough notes about a vote being taken before the meeting or during the meeting, but what I had in mind was that——

Mr. Rosling: If your Honor please, we are not concerned about what this witness had in his mind at that time, but what he wrote and what he did.

The Court: Yes; I think that is correct.

Q. (By Mr. Sembower): Well, did you anticipate at this meeting that an expulsion vote would be taken? A. No.

Q. When you referred to a vote being taken, to what did you have reference? [1464]

A. I thought there would probably be a vote

(Testimony of Miles H. Robinson.)

which would discredit this whole interference by the state grievance committee and we would have a return to our normal procedure.

Q. In that same statement, Dr. Robinson, why didn't you include in the statement any statement to the effect that you had asked Tom Brooks to come in and discuss his ailment with you, and so forth?

A. Oh, you mean in that letter, so-called letter, to the court?

Q. Yes.

A. Well, that was my relationship with Tom Brooks was implied in a number of things that I said in that document and I can recall roughly I spoke about the doctor-patient relationship being destroyed and a better solution would have to be worked out, and oh, there were three or four times in there where I mentioned the breakdown of the relationship between Tom Brooks and his wife and myself.

Q. Dr. Robinson, during the week between your conversation, the days between your conversation with Dr. Stevens on the street and your conversations with the Edwards and Brooks about the difficulty that had arisen, you testified as to various places that you had gone during that time. Did you stop at the Singer Sewing Machine store [1465] where Mr. Edwards worked during that week?

A. Since I was asked that question here some days ago, I was thinking over and going over my day sheets and records for that week and I believe it is quite possible that in my efforts to locate him,

(Testimony of Miles H. Robinson.)

I stopped by where he worked, which was there in Main Street somewhere there.

Q. In your letter to Dr. Berge dated April 13th, Plaintiff's Exhibit 92, you make reference in the fifth paragraph to:

"Therefore, I will not attend your hearing on April 22, 1951." To what did your term "therefore" refer?

A. As I answered this morning, it referred to the thought immediately before that, which was as follows: "It almost seems as if the more I stand up for my rights, the more popular I become with the public here." However, it also referred to the three paragraphs that stand further back ahead of that, and those paragraphs contain the following three items:

The first one was my complaint here—well, it says: "If Fullerton and others of his ilk," et cetera, "are going to conduct—" Well, I should read it, I will read it: "Your statement that Mr. Fullerton has been in charge of all arrangements for this hearing seriously unsettles my confidence in a fairly conducted hearing." Well, that is Item 1 which ends up in my decision not to attend. [1466]

Item 2 is in the third paragraph, "The Constitution of our local society has been flagrantly violated." And then a third item in that same paragraph is where I say I think I have given adequate answers on the Brooks affair. And then on the fourth item, I said: "I believe that the majority of doctors

(Testimony of Miles H. Robinson.)

in this or any other state will sympathize with my objections to this new hearing."

So that made three or four times, and I end up with the statement at the end of the whole series, I say, "Therefore, I will not attend your hearing."

Q. Doctor Robinson, in your reference there to Mr. Fullerton and his being in charge of the arrangements did you have in mind or were you referring to other activities than the ministerial activities that he might carry out as a secretary?

A. Yes; I was.

Q. What were those?

A. Well, he was simply the clearinghouse for everything that was done in the profession and so many things had been done to me, as I felt, namely, this preposterous Edwards complaint and this Brooks complaint, and him being secretary of the secret committee, I just felt that he was at the bottom of everything and that is why I objected to him. [1467]

Q. Now, Dr. Robinson, after you attended the November 21st meeting, which was the meeting held the night after the November 20th meeting at which the grievance committee matter was considered, what was your feeling, if any, about the status of all of these various matters?

A. At the end of the November 21st hearing?

Q. Yes; after the November 21st meeting?

A. Well, I thought the whole thing was done with, because toward the end of that hearing Mr. Brooks was taking a very placating attitude and Dr.

(Testimony of Miles H. Robinson.)

Page said, "Well, there seems to be two sides to this story," and I thought it was all over.

Q. When did you learn then thereafter that apparently the matter was still very much alive?

A. Well, that was on the day of the annual meeting, on December the 13th. Mr. Fullerton wrote me a letter, or Dr. Page did one or the other, saying that they had decided the Brooks complaint fell in a category of things they could refer to the state grievance committee.

Q. Dr. Robinson, you were asked this morning about whether you operated a wheat mill or not. Did you operate a wheat mill?

A. We bought a wheat mill for our home use, and I wanted to be able to supply fresh ground wheat flour for some of my patients as a curative measure and I was unable to [1468] get that wheat flour anywhere in this area, so until we could arrange for Mrs. Johnson to set up a mill, we did grind some at home for a few patients and it was distributed through the office on a non-profit basis.

Q. Did you realize any profit from it?

A. I would say it was a loss to us, as far as that goes.

Q. Did you ever match this activity against the AMA ethics? A. Yes.

Q. Did you consider that?

A. Yes; I considered very seriously whether I was doing anything wrong, but the wheat flour is to my mind in the exact same category as vitamins

(Testimony of Miles H. Robinson.)

and I was merely dispensing a form of a vitamin product, as far as I was concerned.

Q. And was there any other source whatever in this community for that type of flour?

A. No; there was no source anywhere for it. I would like to say that the AMA ethics forbids appliances. It doesn't say anything about nutritional supplements or anything of that kind.

Mr. Sembower: I think that is all, your Honor.

The Court: Let's see, I think Mr. Tuttle is first.

Mr. Tuttle: I have no questions, your Honor.

Mr. Rosling: No questions. [1469]

Mr. Kimball: No questions.

The Court: Very well, anybody else, then?

Mr. Smith: I have no questions.

The Court: That is all, then, Dr. Robinson.

(Witness excused.)

Mr. McNichols: We will call Mr. Fullerton as an adverse witness.

The Court: All right.

CHARLES E. FULLERTON

a defendant herein, called and sworn as an adverse witness by the plaintiff, was examined, and testified as follows:

The Court: I perhaps need not call attention to it, but the Rules of Civil Procedure provide for calling adverse parties as an adverse witness, and in this case where a defendant is called, the defendants' attorneys then have full right to cross-examination within the scope of the direct examination.

You all understand that?

Mr. Kimball: Yes.

The Court: All right, you may take the witness chair, please.

Direct Examination

By Mr. McNichols:

Q. Would you state your name, please, Mr. Fullerton? [1470]

A. Charles E. Fullerton.

Q. And what is your address?

A. Clinton Court, Walla Walla.

Q. You are the Charles E. Fullerton named as a defendant in this action? A. I am.

Q. What is your occupation, Mr. Fullerton?

A. District Manager of a hospital and medical association.

Q. Have you lived in Walla Walla for some considerable time? A. Eleven years.

Q. Directing your attention to the early part of

(Testimony of Charles E. Fullerton.)

the year 1950, were you at that time employed by the Walla Walla Medical Society?

A. I was the Executive Secretary of the medical society on a non-salaried basis.

Q. And when did you first take that employment or that position, I will say?

A. I believe it was in January of 1949.

Q. What other duties did you perform while you were holding that position?

A. I was also Manager of the Walla Walla Medical Service Corporation.

Q. Was that the job for which your salary was paid? A. Yes, sir. [1471]

Q. Did you have any other official duties related to the medical society during that period?

A. No, sir.

Q. To just refresh your memory, you were, were you not, Mr. Fullerton, Secretary of the grievance committee?

A. Oh, yes, pardon me; I was secretary of the grievance committee when it was formed, yes, sir.

Q. Where was your office located, Mr. Fullerton? A. 330 Drumheller Building.

Q. And how much office space did you have there?

A. At that time it consisted of three rooms.

Q. Was one of these rooms the office of the Medical Service Corporation, which we refer to as the bureau?

A. All three of them were used as the offices of the Medical Service Corporation.

(Testimony of Charles E. Fullerton.)

Q. Oh, there were three rooms altogether, then, is that right? A. Yes.

Q. Was any portion of that office used as the office for the Walla Walla Valley Medical Society?

A. They were all used for both purposes.

Q. And it was one office, in effect, for both organizations?

A. Yes, one suite for both organizations, yes, sir.

Q. Did you do all of the filing and office work for the society as well as for the bureau? [1472]

A. Are you speaking of me personally, sir, or the office?

Q. Well, in your position as secretary?

A. Yes, we did all the filing and kept all the record.

Q. In other words, you had a joint position there, in effect, with both organizations?

A. Yes, sir.

Q. Did you keep separate files?

A. Yes, sir.

Q. Separate files, that is, for the society and for the bureau? A. Yes, sir.

Q. When, Mr. Fullerton, were you appointed the secretary of this new grievance committee? Approximately?

A. About April, 1950, I believe, sir.

Q. And was that appointment in writing or by oral statement? How was that conveyed to you?

A. My memory is it was an oral statement.

Q. And who appointed you to that position?

A. My memory on that is Dr. Stevens did, sir.

(Testimony of Charles E. Fullerton.)

Q. At the time you were appointed as secretary of that committee, did you know who the other members of the committee were in addition to Dr. Stevens? A. I did not.

Q. Did Dr. Stevens tell you that he was the chairman of the committee? [1473]

A. I believe he did, yes, sir. Pardon me, he is the only member that I knew and I assumed probably that he was the chairman.

Q. Did you know that it was supposedly a committee?

A. Yes, I knew there would be a committee formed because I had heard previous discussion on it.

Q. Did Dr. Stevens have any discussion with you about the fact that the other members were unknown? A. Not that I recall, no, sir.

Q. Now, what directions did Dr. Stevens give you at the time he made this appointment?

A. Oh, I was to keep the records.

Q. I am referring now to the grievance committee.

A. Of the grievance committee, keep the records of the grievance committee, receive any complaints or inquiries that would come in, transmit them to him in writing, and to keep everything secret, confidential.

Q. You, of course, couldn't transmit them to anyone else, you didn't know what other members there were?

(Testimony of Charles E. Fullerton.)

A. Well, the purpose was to keep the employees of the office from getting into the files.

Q. And did you then proceed to keep records for the grievance committee?

A. There wasn't any, sir.

Q. There weren't any. Do you recall approximately when you [1474] got the first record for that committee?

A. Well, we got our first complaint in or inquiry along in the fall. I think it was about August of 1950.

Q. Prior to that time, you hadn't set up any files of any kind? A. No, sir.

Q. Had you taken any activity whatsoever with respect to any grievances?

A. With respect to grievances?

Q. Yes, prior to the date you have just mentioned, the last part of August, had you had anything to do with any grievances presented to you as secretary of the committee? A. No, sir.

Q. And, of course, you would have had no activities files then on the grievance committee?

A. No active file.

Q. Do you know, Mr. Fullerton, whether or not anyone other than Dr. Stevens knew that you were secretary of this committee?

A. I rather imagine that Dr. Page, the President of the society, knew it. I couldn't be sure.

Q. That is an assumption on your part?

A. That is an assumption on my part.

Q. Mr. Fullerton, when did you first meet or

(Testimony of Charles E. Fullerton.)

speak with Mrs. Noel Edwards, Joyce [1475] Edwards?

A. When she came into the office in, as I say, some time in August of 1950.

Q. You don't, from your own knowledge, remember the date now, I suppose? Well, I will show you Plaintiff's Exhibit 10, which purports to be a copy of a complaint by Mrs. Noel Edwards, and it bears your name at the bottom typewritten. Do you recognize that document? A. Yes, sir.

Q. Now, with respect to the date when you first met or heard from Mrs. Edwards, does that refresh your memory? A. August 29, 1950.

Q. Had you heard from her in any manner prior to that date? A. No, sir.

Q. She did come into your office on the 29th of August? A. Yes.

Q. Approximately what time of day, Mr. Fullerton? A. That I couldn't answer now, sir.

Q. Do you know whether it was in the morning or the afternoon? A. No, I do not recall.

Q. Did she at that time tell you the statement of facts that appears on this document, Plaintiff's Exhibit 10? A. Yes, sir.

Q. Did you at that time have any discussion with her about any matters that don't appear [1476] hereon? A. No, sir.

Q. Did you ever give an opinion at any time, Mr. Fullerton, as to whether or not the facts set forth in this purported complaint warranted a complaint by her? A. An opinion to who, sir?

(Testimony of Charles E. Fullerton.)

A. To anyone.

A. I do not believe so. I don't remember it.

Q. Pardon?

A. I don't recall that I ever did, no, sir.

Q. Could you have, do you suppose?

A. No, I doubt very much if I would have.

Q. As I understand it—well, perhaps you better describe briefly how this complaint was given to you and what you did at that time.

A. When she first came in the office, she stated her complaint or inquiry, whichever you may wish to call it——

Q. Did you consider it as an inquiry or as a complaint at that time?

A. Well, I think it could be called either.

Q. All right, go ahead.

A. And I took a piece of paper out of a desk and put it in the typewriter, and as she repeated it, I typed that statement that is on that letter as she gave it to me.

Q. And then did you dismiss her or did she leave?

A. That is my memory, yes, sir. [1477]

Q. Now, at that time did she make any statements to you as to whether or not she or her husband intended to sue Dr. Robinson over this matter, the dollar and a half matter?

A. Not that I can recall, no, sir.

Q. If she would have said that, would you have more than likely put it in the document?

(Testimony of Charles E. Fullerton.)

A. If she had formed that as a part of her complaint, yes.

Q. You don't recall any such conversation?

A. No, I do not.

Q. Then what did you do with that complaint?

A. Well, I unquestionably delivered it to Dr. Stevens, but whether or not the same day or the next, I couldn't say.

Q. Did you deliver it to Dr. Stevens personally?

A. Yes, sir.

Q. Did it come to your mind at the time this complaint was made that it was a statement based completely on hearsay? A. No, sir.

Q. It was, was it not, a statement by Mrs. Edwards of what someone else had done and said?

Mr. Kimball: If the court please, I believe that calls for the legal opinion of this lay witness, which I think is improper. [1478]

Mr. McNichols: I will rephrase the question.

Q. Mr. Fullerton, at the time this complaint was made to you, you got the facts which appear on there, is that right? A. Yes, sir.

Q. Well, it says here that the sister called Dr. Robinson on the phone and the sister induced vomiting, and so on. Did you ask Mr. Edwards if you could talk to her sister or anything?

A. Pardon me, sir?

Q. Did you ask Mrs. Edwards if it would be possible for you to talk to the sister? A. No, sir.

Q. To your knowledge, did anyone on behalf of the society, of the grievance committee, ever go and

(Testimony of Charles E. Fullerton.)

talk to this sister prior to the time they wrote the letter to the Edwards?

A. I have no knowledge of what the grievance committee or anyone else did, sir.

Q. In any event, you didn't? A. No, sir.

Q. At the time this complaint was made, Mr. Fullerton, you knew, did you not, that a short time prior thereto Dr. Robinson had resigned from the bureau?

Mr. Kimball: If the Court please, I object to that [1479] as a leading question.

The Court: Well, he has a right to ask leading questions. This is an adverse witness.

Mr. Kimball: Oh, yes; that's right.

Q. (By Mr. McNichols): Do you have the question, Mr. Fullerton?

A. Yes; I am trying to remember what date Dr. Robinson resigned from the bureau and I can't recall it.

Q. Well, perhaps I can bring you something that will refresh your memory.

Referring now to Plaintiff's Exhibit No. 11, which purports to be a letter from you directed to Dr. Robinson, that states, does it not, that his resignation was accepted by the board of trustees the night before?

A. Yes, sir. That is on August the 30th, sir.

Q. This is August 30th, it indicates the resignation was effective, was accepted, on the 29th. My question was, does that refresh your memory, did you have that in your mind at the time?

(Testimony of Charles E. Fullerton.)

A. Well, I can't recall now that I did, sir.

Q. Well, then subsequently, Mr. Fullerton, you wrote a letter to Mrs. Noel Edwards, did you not, concerning this complaint? To refresh your memory, I show you Plaintiff's Exhibit No. 15.

A. Yes, sir; I wrote that. [1480]

Q. Was that written on the date which appears thereon? A. Yes, sir.

Q. September 30, 1950? A. Yes, sir.

Q. That was a month after the complaint originally had been made, was it not?

A. Slightly over a month, yes, sir.

The Court: What is the date of that letter?

Mr. McNichols: September 30, 1950.

The Court: Yes, all right. Was that directed to Mrs. Edwards?

Mr. McNichols: Mrs. Edwards.

The Court: Mrs. Edwards. Are you through with 10? I just wanted to look at it for a moment if you are.

Mr. McNichols: Oh, yes. Just a second.

The Court: That is the Edwards complaint?

Mr. McNichols: Yes, your Honor, it is.

The Court: Had you finished interrogating regarding it?

Mr. McNichols: For the moment, I believe.

The Court: I see, all right.

Q. (By Mr. McNichols): Where did you obtain, Mr. Fullerton, the text of the letter which you have just seen that you wrote to the Edwards?

A. From Dr. Stevens. [1481]

(Testimony of Charles E. Fullerton.)

Q. That was by letter which is Plaintiff's Exhibit No. 14?

A. I believe that is the letter that I copied, yes, sir.

Q. Did Dr. Stevens present this letter to you?

A. Yes, sir.

Q. What instructions did he give you at that time?

A. To recopy it, sign it, forward it to the addressee.

Q. Did he also instruct you to send a carbon copy to Dr. Robinson?

A. He probably did; yes, sir.

Q. Do you remember whether or not Dr. Stevens stated whether he had investigated the complaint?

A. No, I do not, sir.

Q. Now, Mr. Fullerton, when was the first occasion that you talked with or saw Mr. Tom Brooks?

A. It was about October—can you give me the date when he called me on the phone, the Monday morning he called me, what day of the month that was?

Q. Perhaps this might refresh your memory. The copy of the so-called Brooks statement is plaintiff's Exhibit 18, indicates that a meeting was held Wednesday, October 11th, at 5:30 p.m.

A. Then, the first time I saw him was the day before during the noon hour, and I wish to correct my deposition, I was in error there in my answer in my deposition. The first time that I saw Mr.

(Testimony of Charles E. Fullerton.)

Brooks was when he came to [1482] the office on the Wednesday to file his complaint.

Q. Was it Wednesday or Tuesday? Now, the date I gave you, the date of the hearing was on Wednesday.

A. Wednesday?

Q. When was it you saw him first?

A. Tuesday during the noon hour at his place of employment.

Q. At his place of employment?

A. Yes, sir.

Q. How did you happen to go to his place of employment?

A. To notify him the hearing was to be held the next day at 5:30.

Q. Now, when did you first talk to Tom Brooks?

A. Well, the first time I ever heard from him was when he called me on the phone about 8:30 Monday morning.

Q. Monday morning; was that the 9th of October?

A. That would be the 9th of October, yes, sir.

Q. 1950? A. Yes, sir.

Q. And where were you at that time?

A. At home.

Q. Did he state how he happened to be calling you?

A. Not that I recall, no, sir. As to why he called me, no, sir.

Q. Had you ever heard of him before?

A. No, sir. [1483]

(Testimony of Charles E. Fullerton.)

Q. In that conversation on the telephone at your home, how long was that conversation, incidentally?

A. Oh, I would guess now it was 15 to 20 minutes.

Q. Did he at that time state to you the nature of this complaint he had against Dr. Robinson?

A. Yes, sir.

Q. What did you tell him?

A. I told him that I would not accept a complaint over the phone or take any action on it until I had reported it to the officers of the society.

Q. And then what did you tell Tom Brooks you would do then?

A. Oh, I think the previous answer, that I would report to the society and advise him whatever instructions I received.

Q. And then did you go to work that morning?

A. Yes, sir.

Q. Did Mr. Brooks say anything with reference to whether or not he had discussed this matter with a member of the society prior to calling you?

A. Not to my memory, no, sir.

Q. When you went to work, who did you report it to?

A. Dr. Sam Page, the President of the society.

Q. What time of day did you do that, do you remember?

A. I am sure it was before noon. Oh, I would say somewhere around 11:00, 11:30. [1484]

Q. Did you make any notes on the telephone conversation?

A. No, sir.

(Testimony of Charles E. Fullerton.)

Q. Did you write down the name of the person who called you?

A. Might have; I couldn't answer now whether I did or not.

Q. You don't have any memoranda relating to that telephone conversation? A. No, sir.

Q. Did Tom Brooks tell you on the telephone that he was related to Mrs. Edwards, the woman who previously registered a complaint with you?

A. I believe he did, sir.

Q. Did you later learn whether or not Tom Brooks had discussed this matter with a physician prior to coming to you?

A. Well, my answer to that would have to be hearsay. I either was told that or read it in the record sometime quite a little while later.

Q. You didn't have any knowledge of it during that period? A. No, sir.

Q. Did you ever later talk to the physician who had in fact talked to Tom Brooks?

A. No, sir.

Q. Now, following your reporting this matter— incidentally, did you just talk to Dr. Page about the complaint? [1485] A. Yes, sir.

Q. No one else?

A. I gave him the substance of it the best that I could of the complaint that had been filed as Mr. Brooks had given it to me.

Q. And then you proceeded to arrange for this meeting on Wednesday night, did you?

A. Not until I received instructions to do so

(Testimony of Charles E. Fullerton.)

from Dr. Page, which I believe was the next day, although it could have been the same evening.

Q. But you saw Brooks the next noon, is that right? A. I saw Brooks the next noon.

Q. Was it at that time that you told Brooks to be there on Wednesday evening?

A. Yes, sir.

Q. And was it you that arranged for the trustees of the society to be there?

A. Under instructions, I called the trustees of the society, yes, sir.

Q. Did you also arrange for the members of the grievance committee to be there?

A. Well, I told Dr. Stevens. Now, whether or not I was given instructions to notify who later I found out were members of the grievance committee or not, I couldn't say, or whether somebody else notified them to be there. [1486]

Q. You say you told Dr. Stevens about it?

A. I notified him that the meeting—pardon me, I am in error there, because Dr. Stevens wasn't in town, couldn't have.

Q. Oh. Well, it might refresh your memory if I show you a copy of the Brooks complaint, which is Plaintiff's Exhibit 18. It purports to state at the top who was present there. Did you notify all of those people to be present?

A. I rather believe I did, yes, sir.

Q. Did you take care of notifying the society attorney and the stenographer?

A. I notified Miss Curts, the stenographer. I am

(Testimony of Charles E. Fullerton.)

not so sure but what Mr. Kimball wasn't consulted by Dr. Page as to procedures and policy, and I couldn't answer your question.

Q. I understand you were operating under the directions of Dr. Page?

A. That is correct, exclusively.

Q. Did Dr. Page specifically mention that he wanted a stenographer there? A. Yes, sir.

Q. Do you remember whether or not when Tom Brooks called you, he referred to any specific disease?

A. No, I do not, without going back and re-reading his [1487] deposition, or his statement, I couldn't answer whether he did or not.

Q. Did you read his deposition lately?

A. No, sir, I have never seen it.

Q. I was just wondering about your recollection of the telephone call.

A. The main recollection I have of the telephone call was what I assumed to be a charge of blackmail, and I was on my guard from that time on and listened to the whole complaint as Mr. Brooks gave it to me and kept that reservation back in my mind, that this is too serious for me to make any statements to him or accept any.

Q. Going back to the Edwards complaint, was that the first complaint you had received in your status as secretary of the grievance committee?

A. Yes, sir, the Edwards complaint, yes, sir.

Q. Was the Brooks complaint the second one you had received? A. Yes, sir.

(Testimony of Charles E. Fullerton.)

Q. Did you receive any others?

A. I can recall two more that came quite some-time later, yes.

Q. How long later, approximately?

A. Oh, I would say either in the spring or summer of 1951, somewhere along through there.

Q. Were those written complaints? [1488]

A. Pardon?

Q. Were those written complaints?

A. Yes, sir.

Q. Did you set up files in your grievance committee files on those?

A. Well, they were delivered to Dr. Stevens and if they ever came back to my office, they were put in the files, yes, sir.

Q. In other words, if those complaints had been made in writing and never returned, they would presently be in the files of the society or the bureau?

A. They would be in the files of the society.

Q. Did you have a special file of the grievance committee?

A. Yes, sir, a locked steel file.

Q. But until 1951, those are the only two complaints you functioned on, is that right?

A. Yes, sir.

Q. Were you present, Mr. Fullerton, at the meeting when Tom Brooks made his complaint, which was on the 11th of October at 5:30 p.m.?

A. Yes, sir.

Q. And did you hear the proceedings?

A. Yes, sir.

(Testimony of Charles E. Fullerton.)

Q. Where were you during this meeting?

A. I was in one of the work rooms of the suite. [1489]

Q. You were in a position where you weren't visible but you could listen?

A. I was in a position where I could see Mr. Brooks but none of the rest of the members that were there.

Q. Could they see you?

A. No, they could not see me, either.

Q. You could hear what transpired?

A. Yes, sir.

Q. Did you keep any notes on what transpired?

A. No, sir.

Q. Have you ever arranged for such a meeting before, Mr. Fullerton?

A. You mean a hearing like the Brooks hearing?

Q. Yes.

A. No, sir, we never had one before.

Q. Did you ever have one since?

A. Only the state grievance committee.

Q. I am not speaking——

A. No, we did not ever have another meeting of the same type, no, sir.

Q. Were you the one, Mr. Fullerton, who instructed Miss Curts to prepare a transcript of that hearing, or do you recall?

A. I don't remember whether I was the one who instructed her or Mr. Kimball or Dr. Page. I could have been the [1490] one who did so, yes.

(Testimony of Charles E. Fullerton.)

Q. Was she told that night to the best of your knowledge to prepare one?

A. Yes, sir, to the best of my knowledge, yes, sir, and to expedite it.

Q. To expedite it. Who instructed her to expedite it?

A. I don't remember, but I remember of going down to see Miss Curts, oh, I think once or twice, asking the status of it.

Q. Where was Miss Curts officing at the time?

A. She was court reporter in the Superior Court, she was in the court house.

Q. You went down to see her about it?

A. Yes, sir.

Q. When, approximately, do you remember?

A. I wouldn't have any specific knowledge. I would say probably 10 days after the hearing and maybe again two weeks, three weeks, after the occasion.

Q. On at least two occasions, you went down to see her?

A. I would say at least two occasions. Might have called her on the phone, for all I can remember now.

The Court: How do you spell that name? It has been mentioned a number of times. Miss Curtz?

Mr. McNichols: C-u-r-t-s.

The Court: C-u-r-t-s. Was she the official court [1491] reporter for the Superior Court for Walla Walla County?

A. Yes, sir. Jury trial at that time.

(Testimony of Charles E. Fullerton.)

Q. (By Mr. McNichols): Did you notify Dr. Robinson of this complaint having been made?

A. I can't recall that I ever did, no, sir.

Q. Of course, he was notified for the November 21st hearing, but I meant other than that?

A. Well, I don't identify the hearing that you mean by the November 21st hearing, sir.

Q. Well, there was a hearing held, for your information, Mr. Fullerton, on the 21st of November before the trustees of the local society on the Brooks complaint. I don't know if you were present at that meeting or not.

Did you take any action on this matter, Mr. Fullerton between the time that Mr. Brooks made his complaint and the time the hearing was held in November?

A. The only action that I can recall of taking, sir, was to inquire of Miss Curts possibly a time or two when we might receive the transcript.

Q. Did you get any instructions from any official of the society to communicate with the state grievance committee during that period?

I will refresh your recollection. It is hard for you to remember, I know.

A. I can't remember dates. [1492]

Q. When did you get the transcript, incidentally, from Miss Curts? Do you remember approximately?

A. Almost exactly a month after it was given, after the hearing.

Q. Somewhere close to the 11th of November?

(Testimony of Charles E. Fullerton.)

A. Very close to that, the 9th or 11th or somewhere almost exactly a month later.

Q. Well, now, I will show you Plaintiff's Exhibit No. 23 for identification—oh, I see, no, that is admitted—Plaintiff's Exhibit No. 23, which purports to be a letter dated October 16, 1950, from Mr. Fullerton to Mr. Neill, and ask you if you have seen that document before or the original of it? This is a photostatic copy. A. Yes, sir.

Q. Is that a letter that you wrote to Mr. Neill on the 16th of October, 1950? A. Yes, sir.

Q. Under what direction did you write that letter, Mr. Fullerton?

A. Well, my memory now is at the direction of Dr. Stevens. We were attempting to find out where we might find rules and regulations governing a grievance committee, its operations and its functions.

Q. What grievance committee are you referring to, state or local? [1493]

* * *

Q. You weren't at that time familiar with any other situation that it could be referring to, were you? A. No, sir.

Q. Now, Mr. Fullerton, showing you Plaintiff's Exhibit No. 24, which purports to be a letter from R. W. Neill of the Washington State Medical Association, dated October 17, 1950, directed to "Dear Charlie," would you examine that exhibit, please?

A. Yes, sir, this is Mr. Neill's answer to my previous letter, is it not?

(Testimony of Charles E. Fullerton.)

Q. I am asking you, I assume it is. You are the "Dear Charlie" referred to in that letter?

A. That is correct, yes, I got this letter.

Q. And that letter answered the numbered paragraphs of your letter of October 16th?

A. Correct.

Q. Is your memory refreshed any better, Mr. Fullerton, as to whose instructions you were acting under in this inquiry?

A. No, I do not recall. If Dr. Stevens was not yet in town, I don't recall who gave me the instructions.

Q. With whom were you dealing within the society primarily about this hearing and this grievance committee meeting? With Dr. Page?

A. Frankly—either Mr. Kimball or Dr. Page exclusively, I [1496] would say.

Q. Did you convey to any officials of the society the context of the letter which Mr. Neill wrote back to you on the 17th of October?

A. My answer would be I must undoubtedly have given it to the person who asked me to write the original letter.

Q. Did you tell them that Mr. Neill had informed you that there were no rules and regulations for the state grievance committee as yet?

A. Well, that is what the letter states, does it not?

Q. Well, I will read it. That isn't exactly what it states, but it says—well, I will read the letter briefly:

(Testimony of Charles E. Fullerton.)

“1. The House of Delegates approved formation of a state Grievance Committee, to be appointed by the Board of Trustees, next meeting being scheduled for October 29, Seattle.

“5. Except those contained in the amendment to the Bylaws, which authorized formation of the Committee, the rules and regulations have not been adopted.”

I assume your purpose, Mr. Fullerton, in writing Mr. Neill was to find out how the state committee would function and in what manner, was it not?

A. I believe that is correct, sir. [1497]

Q. Do you recall reporting back to anyone and stating, in effect, that they had no rules and regulations yet?

A. Well, again I state that unquestionably I showed that letter to whoever instructed me to write the original letter.

Q. I will show you Plaintiff's Exhibit No. 39, Mr. Fullerton, which is a letter from the Walla Walla Society to Dr. Robinson, signed by Sam R. Page as President. You may not have seen that before. Tell me whether or not you have or a copy of it, if you remember?

A. Well, I couldn't answer now, sir, whether I ever saw the letter at the time it was written or whether it came to my attention later for filing.

The Court: What number is that, please?

Mr. McNichols: That is No. 39, your Honor.

The Court: Oh.

Q. (By Mr. McNichols): Well, this letter, Mr.

(Testimony of Charles E. Fullerton.)

Fullerton, if it refreshes your memory, directed Dr. Robinson to appear at a meeting of the trustees to be held on the 21st of November, 1950. The letter was dated November 10, 1950.

Now, between the 10th of October and the 10th of November of that year, did you have occasion to see Dr. Robinson?

A. Possibly did have, yes, sir. [1498]

Q. Do you know whether or not you talked with him?

A. No, I do not recall any conversations with the doctor during that period.

Q. Did you ever inform him that a complaint had been made against him?

A. Pardon me, sir?

Q. Did you ever inform him that a complaint had been made against him by Mr. Brooks?

A. I don't remember now that I ever did, no, sir. May have.

Q. Do you recall whether you were ever requested by any official of the society either to inform him or not to inform him?

A. I was never instructed not to inform him and I do not recall ever being requested to inform him.

Q. Well, this was somewhat of an unusual matter, was it not?

A. Well, it was to me, yes, sir.

Q. It was an unprecedented meeting of October 11th, was it not, when Mr. Brooks made his complaint?

(Testimony of Charles E. Fullerton.)

A. Well, there was no precedent before it, no, sir.

Q. To your knowledge, has there ever been a member of the society disciplined in that manner or in any similar manner?

A. Not that I know anything about, no, sir.

Q. Well, to your knowledge, Mr. Fullerton, did Dr. Robinson [1499] have any knowledge whatsoever that a complaint had been made by Mr. Brooks prior to your writing to the state association?

A. You say to my knowledge?

Q. Yes.

A. I would have no knowledge of it, no, sir.

Q. You don't recall whether there was any other way he might have learned of it?

A. I wouldn't know whether any of the other members that attended the meeting may have told him, no, sir.

Q. Now, Mr. Fullerton, between the time that Brooks made his complaint to this meeting, at which I believe you testified you were present, and the hearing of November 21st, did you have any communication with Tom Brooks?

A. Well, I remember an occasion or two where Mr. Brooks asked me with regard to whether or not Miss Curts had completed the transcription.

Q. Where did you see him?

A. Pardon me, sir?

Q. Where did you see Mr. Brooks?

A. I don't know that I saw him. Probably he

(Testimony of Charles E. Fullerton.)

called me on the phone. Might have seen him somewhere.

Q. On how many occasions would he have done that?

A. Well, I can recall one, but whether there were more, I wouldn't say. [1500]

Q. Now, these questions are directed to the period between the 10th of October and the 21st of November. During that period, did you have any communication with any other members of the Brooks family or the Edwards family?

A. Not that I can remember, no, sir.

Q. Did you write any letters to them? I am merely testing your memory, I don't know myself whether you did or not.

A. The only letter I ever wrote to any of the members of the family was the one that was given me by Dr. Stevens.

Q. That was the earlier one we have discussed before?

A. I don't know whether that came within this period right at the present.

Q. What I am wondering about, a number of the members of the family appeared at the hearing of November 21st relative to Mr. Brooks' complaint.

A. You say a number of them did?

Q. Yes. Do you know who communicated with them?

A. I probably did. That was the duties that I was performing at that time, I probably instructed

(Testimony of Charles E. Fullerton.)

them to be there. Was that the meeting that was held at Dr. Ralston's office?

Q. Yes.

A. Unquestionably, I would say that I must have instructed them to be there or asked them to be there.

Q. Do you remember whether you wrote to them or telephoned [1501] them or how you did it?

A. No, I do not, I don't remember now.

Q. Were you acting under someone's directions at that time? A. Yes, sir.

Q. Do you recall now who it was?

A. Dr. Page.

Q. Did he specifically tell you who he wanted present? A. He must have.

Q. You would have made no decision on anything of that yourself? A. No, sir.

Q. Are you fairly certain, Mr. Fullerton, that you didn't have any communication with Mrs. Edwards prior to the time she came in your office?

A. Absolutely. Positive that I did not.

Q. Now, with respect, Mr. Fullerton, to the transcript of the November 21st hearing, do you recall approximately how long it was from the time that hearing was held until the transcript was prepared?

A. To be certain, I wish to again identify the November 21st hearing. Is that the one at Dr. Ralston's office?

Q. Yes, that was the one at which——

A. No, I do not recall how long it took Miss Curts to produce it.

(Testimony of Charles E. Fullerton.)

Q. Do you recall with respect to that particular meeting, [1502] the one you referred to as the one in Dr. Ralston's office, whether or not you had ordered the transcript of that from Miss Curts at the time it was taken?

A. I doubt very much if I did because I wasn't present at that meeting.

Q. You don't remember ordering the transcript?

A. No, I do not.

Q. Well, tell me, Mr. Fullerton, if this refreshes your memory. I am reading from Page 54 of Plaintiff's Exhibit 97, which is a transcript of the hearing before the Grievance Committee of the Washington State Medical Association, held in the Marcus Whitman Hotel on the 22nd of April, 1951.

First of all, did you attend that hearing?

A. I was called in and testified, yes, sir, and the rest of the time I was not present at any of the other testimony.

Q. At this particular point, Dr. Berge is questioning:

"Give us in your own words what happened to your little baby."

He is questioning Mrs. Noel Edwards, Joyce Edwards.

"A. My mother was shifting houses and had packed different goods in boxes and this youngster here, not quite two, got into the box of Ex-Lax and she had [1503] both boxes and noticed it in her mouth and called Dr. Robinson. He said to make her vomit and he would send a prescription or call

(Testimony of Charles E. Fullerton.)

the drug store and have them fix a prescription and if that didn't do it we would have to take her to the hospital. I came home and was getting worried because he did not leave the prescription. I called and he said, 'Oh, I have forgotten,' and he told me to give her epsom salts.

"Q. Are you sure that is what it was?

"A. It wasn't me, it was my sister.

"Q. Are you quite sure it was epsom salts?

"A. I am quite sure that is what he told her. He said he didn't think we would give it and she couldn't go to sleep and was crying. When I got this statement, I called. The reason I made the check, we hadn't gotten the prescription and he said it was for the phone call. I didn't think he was warranted in that. In my opinion, it was my youngster's life if we couldn't make her vomit and [1504] he said that was definitely what it was for. I called Mr. Fullerton and asked if I could make a complaint and he said it wasn't warranted."

Does that refresh your memory?

A. As to whether or not I had previous communication?

Q. Yes.

A. With her. I do not recall that statement at all, no, sir. I am not denying that it wasn't made, I am just saying I do not recall ever having discussed with her or seen her before she came into the office.

Q. Well, would it refresh your memory possibly

(Testimony of Charles E. Fullerton.)

if I told you that the incident about the child occurred in the early part of June of 1950?

A. No.

Q. Assuming the statement in the Edwards complaint to be a complete statement which you typed up, do you think from examining that statement you might have made the statement that a complaint wasn't warranted on that?

A. No, I do not think there is anything in this that would indicate to me that I had ever talked to her before.

Q. No, no, perhaps I didn't make it clear, Mr. Fullerton. From the facts set forth, the statement of facts as set forth in that complaint, do you think you might have made the statement that if you had heard those facts [1505] before, that a complaint wasn't warranted? Read it, if you so desire.

A. I know completely what is in there. No, sir, I was making no decisions at that time, and that was more in the way of an inquiry, I place it, than a complaint, and I referred it to the authorities to whom I had been instructed to give it to.

Q. Had you, Mr. Fullerton, some feeling prior to the 29th of August, that you and Dr. Robinson weren't on the best of terms?

A. Well, I would answer your question this way, sir: After Dr. Robinson bought Dr. Campbell's practice, and just when that was, I don't remember, pretty much all relations between Dr. Robinson, his office and our office, ceased, and I wouldn't say that

(Testimony of Charles E. Fullerton.)

that was strained relations or anything. He was busy and we were busy.

Q. Would you say that the relationship was different than it had been with Dr. Robinson? I am speaking of you, yourself, and Dr. Robinson?

A. Well, prior to the time that he bought Dr. Campbell's practice, he did considerable welfare work and I used to go up to his office up on——

Q. To the house where he officed?

A. In the house where he lived, and helped him prepare his state billings and talked with him quite a number of [1506] times.

Q. Then his association with your medical bureau, his activity decreased when he went into Dr. Campbell's office?

A. Well, the situation, my office and his office, the girls did the business, rather than Dr. Robinson and I doing the business. In other words, he had help and there was help in my office and they ironed out the problems.

Q. Summing it up, during that period did you feel that the relations between yourself and Dr. Robinson were more strained than they had been before?

A. I am having trouble trying to define your word "strained." We never had any words.

Q. Was there a change?

A. There had been a change.

Q. In your relationship?

A. Yes, sir, there had been a change in our relationship.

(Testimony of Charles E. Fullerton.)

Q. And as a result of that change, were you less friendly with him or was he less friendly with you? Was your relationship friendly?

A. Well, the best answer I can give you on that, I used to have trouble getting him to speak to me. I would say hello and he would walk right by without even looking. That is the best answer I can give on strained relationship. [1507]

Q. Can you pin that down in time?

A. A number of times I have gone out of my way to speak to the doctor when he was walking down the street. He may have been preoccupied, I don't know, but I made an attempt to speak to him when I would see him, and many times he would pass me by without answering me.

Q. Was that after the Edwards complaint had been made or before?

A. I couldn't pin point it down to that, no, sir. I can pin point it down to after he had bought Dr. Campbell's practice.

Q. When you communicated with Mr. Neill shortly after the Brooks complaint was made, that is, the week of the 16th, 17th, of October, had you been told by officials of the society that they were going to press this matter with Dr. Robinson through the state grievance committee?

A. No, sir, no one told me they were going to press this through the state grievance committee.

Q. Well, then, what was said to cause you to make these inquiries?

A. Someone probably instructed me to write and

(Testimony of Charles E. Fullerton.)

see if there was a grievance committee and, if so, who they were and how to get in touch with them, what their rules and regulations were.

Q. Did they indicate it was with reference to Dr. Robinson? [1508]

A. Well, I don't recall anyone ever brought up that question, no, sir, or made that statement.

Q. There was no question in your mind that that is what it was related to?

A. I think it must have been, yes.

Q. Well, then subsequently in these proceedings, Mr. Fullerton, you did most of the leg work in setting up the meetings and arranging for a stenographer and hotel room, and so on, primarily for the state grievance committee meeting, did you?

A. I went to the management and arranged for a hearing room, I made hotel reservations, for the doctors that were going to be here overnight, and I think that was all I did.

Q. Did you ever proofread these transcripts with Miss Curts? A. No, sir.

Q. Did you or anyone under your direction ever retype any of these transcripts? A. No, sir.

Q. Copy them? A. No, sir.

Q. Did you ever have them in your office for any purpose during this period, the copies of the transcripts?

A. Well, Miss Curts, of course, delivered the first one to my office and they immediately went out to the members [1509] of the trustees and the others who were interested in this.

(Testimony of Charles E. Fullerton.)

Q. Also, you sent a copy to Tom Brooks, did you?

A. I believe I did, and also gave one to Dr. Robinson.

Q. Had someone instructed you to send a copy to Tom Brooks?

A. I won't say that I gave Mr. Brooks a copy, I couldn't answer that definitely. But if he got one, I must have given it to him.

Q. Well, I had forgotten more or less, too, but I will show you Plaintiff's Exhibit No. 54, which purports to be a letter of December 13, 1950, written by you to Mr. Thomas Brooks——

The Court: What number is that?

Mr. McNichols: That is No. 54, your Honor.

A. Yes, sir.

Mr. McNichols: Perhaps that hasn't been admitted.

The Court: No, it hasn't. Yes, that is not in evidence.

Q. (By Mr. McNichols): Would you please tell the Court what that letter purports to be?

A. It is a letter which I wrote to Mr. Brooks advising him that upon instructions of Dr. Page, President of the Board of Trustees, I was transmitting to him a copy of the transcript, I was forwarding him a copy of the transcript. [1510]

Q. Of the second meeting of the Board of Trustees held to hear the answer of Dr. Miles Robinson to the original complaint of Thomas Brooks.

(Testimony of Charles E. Fullerton.)

Would you read the second paragraph, please, Mr. Fullerton?

The Court: This isn't in evidence. Do you want to admit it?

Mr. McNichols: Oh, I will submit it, your Honor, I'm sorry. Is there any objection to that?

Mr. Kimball: No objection.

The Court: Plaintiff's Exhibit 54 will be admitted.

(Whereupon, the said letter was admitted in evidence as Plaintiff's Exhibit No. 54.)

Mr. Kimball: Is this the same letter that went to Dr. Robinson?

Mr. McNichols: I think it is almost identical, Mr. Kimball.

The Court: That would be 53, then.

Mr. Kimball: No objection.

Q. (By Mr. McNichols): Just read the second paragraph briefly, Mr. Fullerton.

A. (Reading):

"This transcript was delivered to the Executive Secretary, by the reporter, in the [1511] late afternoon of December 12, 1950."

I believe. Yes, sir.

Q. Fine. You enclosed a copy of that transcript in that letter to Mr. Brooks?

A. Unquestionably must have, yes.

Q. Pardon?

A. Unquestionably, I must have, yes.

Q. One thing, Mr. Fullerton, did you have a dis-

(Testimony of Charles E. Fullerton.)

cussion with Miss Curts when you obtained this transcript from her?

A. The second one, sir, or the first one?

Q. Well, let's take the first one first?

A. Did I have a discussion with her?

Q. Yes. You mentioned it was to be expedited earlier, I believe, didn't you?

A. At the time the hearing was held, we asked her to hurry as fast as she could, yes.

Q. Did you with respect to the second hearing request Miss Curts to prepare the transcript?

A. Well, I don't recall that I did, sir, because I wasn't present. I wasn't present at that hearing, so I doubt if I saw Miss Curts when she left.

Q. Do you recall telephoning Miss Curts about that transcript, the second one?

A. I have a recollection——

Q. Do you recall calling her and then her saying that no [1512] one had ordered a transcript?

A. No, I don't recall that. I do remember of calling her and asking her if it would be possible for her to have it ready on some date or something of that nature, and she said in order to do it, she would have to work all night, and I think she prepared it, I guess she did work all night and prepared it.

Q. That is what I was getting at. Did she later tell you she worked all night preparing it?

A. Just seems to me I remember her saying that, yes.

Q. Now, that was delivered to you, I believe, according to the statement in Exhibit 54 which we

(Testimony of Charles E. Fullerton.)

just referred to, in the later afternoon of December 12, 1950. Was your conversation with her the day before that?

A. Well, I wouldn't say just how soon it was before that delivery that conversation was. I don't know whether it was the day before or two days before.

Q. Did you ask her to work all night to get it out?

A. No, I didn't. She said she would have, I remember that.

Q. You requested it for the next day, did you, when you talked to her?

A. That I couldn't say, what my request was.

Q. You do recall a conversation?

A. I recall a conversation and I recall she, in order to get it on the deadline we asked, she would have to work [1513] all night.

Q. Do you recall in that same conversation her saying to you that no one had ordered one?

A. No, I do not recall that.

Q. Could such a statement have been made, to the best of your knowledge?

A. Could it have been by her?

Q. Yes. A. Yes.

Q. One thing, Mr. Fullerton, when did you resign your position with the bureau or the society?

A. April 1, 1952.

Q. At all times from April of 1950, and until your resignation, did you serve in these three capacities to which you have testified?

(Testimony of Charles E. Fullerton.)

A. Well, I served as Executive Secretary of the society from January, '49, Manager of the Bureau from '45, and Secretary to the grievance committee from around April, 1950, on.

Q. Did you have charge of keeping the minutes of the society meetings? A. Yes, sir.

Q. Did you prepare them yourself or were they prepared under your supervision?

A. You mean the actual typing as shown in that book? [1514]

Q. Yes.

A. I would take them at the meeting and dictate them to my secretary and she would write those up.

Q. You made notes on them or do you take shorthand?

A. No, I do not take shorthand, sir.

Q. Make rough notes? A. Rough notes.

Q. Transcribed them? A. Yes, sir.

Q. They were prepared then in your office, were they?

A. Some of those minutes were made by doctors at meetings in which I was not in attendance.

Q. Oh, you didn't prepare them all, then?

A. No, not all of them, no, sir.

Q. Did you, Mr. Fullerton, in your keeping these minutes, did you keep track of all the discussions that were held with respect to a given motion?

A. No, sir, no discussions.

Q. You would merely put the formal motion in?

A. Took the corporate action, that was all that

(Testimony of Charles E. Fullerton.)

was recorded, tried to record who spoke on the motions.

Q. Numerous things could occur in the meetings, then, which aren't reflected in the typewritten minutes?

A. Oh, yes, private discussions and discussions about subjects that were not before the house, they were not [1515] recorded in the meetings in any way.

Q. How about the discussions of motions?

A. Discussions of motions, the people who talked on those motions, I tried to record who did it, not what they said.

Q. As to the name, but not as to the context?

A. Not as to the context, no, sir.

Q. Were you present, Mr. Fullerton, at the meeting of the society held on May 22, 1951? To refresh your recollection, that was the so-called expulsion meeting at which Dr. Robinson was expelled.

A. I would have to look at the records.

Q. All right, I will find it here for you in just a moment.

A. There was a meeting held at the hospital at which I was not in attendance.

Q. If your name appears here as members present, C. E. Fullerton, Executive Secretary, you would more than likely be present?

A. One of these I was excused and someone else——

Q. A society meeting?

A. Yes, sir.

Q. Well, perhaps——

(Testimony of Charles E. Fullerton.)

A. I would have to search that record out, because one of those meetings held Dr. Robinson and I both were excused from the meeting, we both sat out in the hall of [1516] the hospital.

Q. Well, showing you the last page of the meeting of May 22, 1951, I see meeting adjourned at 11:30 p.m., Leroy Carlson, M.D., Secretary, C. E. Fullerton, Executive Secretary.

Does that refresh your memory?

A. I think that was the meeting at which I was not present.

Q. You were not present at the meeting of May 22nd?

A. I think that is the one. To be absolutely positive, have to search that whole record.

Q. Did you also, Mr. Fullerton, keep the minutes of the board of trustees of the society?

A. All at which I was in attendance, yes, sir.

The Court: Time for recess, I think. I will recess for ten minutes.

(Whereupon, a short recess was taken.)

Q. (By Mr. McNichols): Now, Mr. Fullerton, to digress just a moment, with respect to the letter which you wrote to the Edwards family on either the last of August or the first of September, did you mail that on the date that appears on the letter?

A. I would say undoubtedly, yes, sir.

Q. Deposited it in the mails in the ordinary manner?

A. Yes, sir, undoubtedly. [1517]

Q. Did you in keeping your minutes of the meet-

(Testimony of Charles E. Fullerton.)

ings of the society and the board of trustees normally make mimeographed copies?

A. Only in specific instances, I think, because they were always read back at the next meeting.

Q. Did you only do so when you were requested to do so?

A. Instructed to do so, I believe so.

Q. The reason I am asking, I notice a number of them are mimeographed. What was the purpose of mimeographing the minutes?

A. Probably instructions to pass them around to all of the interested parties, all the members of either the society or the bureau or the trustees.

Q. When were they mimeographed with respect to the date of the meeting?

A. That would be the next day.

Q. The next day?

A. I would dictate them.

Q. Did you ever incorporate anything in the minutes that didn't take place at the meeting?

A. Not that I can ever recall, no, sir.

Q. One reason I was asking, I am showing you Defendants' Exhibit No. 446, minutes of the meeting of the board of trustees of the society held on the 18th of July, 1950. There is some question here as to why the following [1518] statement appears to have been typewritten in:

"Dr. Keyes moved, seconded by Dr. Lange, that the ruling of the Chair be confirmed. Motion carried."

Can you explain that?

(Testimony of Charles E. Fullerton.)

A. No, I cannot, sir, unless——

Q. Did you have that typewritten in there?

A. The procedure would have been I would have dictated this to my secretary and she would have made this up. And unless she may have made a mistake and corrected it herself. Those were all read back and approved.

Q. The minutes were obviously mimeographed without that statement in there, were they not?

A. I couldn't tell you now why that is inserted that way unless she made an error and after she had completed her mimeographing, she run it through her machine and put it in.

Q. Are you familiar with mimeographed copy and typewritten copy?

The Court: What is the reference here?

Mr. McNichols: This sentence, your Honor (indicating).

The Court: Oh.

Mr. McNichols: That follows between the two.

The Court: Oh, I see. [1519]

A. Is that bond paper or is that mimeograph paper? Well, it looks to me like this is typewritten, all typewritten, on mimeograph paper.

Q. (By Mr. McNichols): Oh, you mean the entire entry is typewritten?

A. Looks to me like it. That is not bond paper. It looks to me like it is all typewritten on mimeograph. However, that is only an assumption on my part.

(Testimony of Charles E. Fullerton.)

Q. Would you say this is also typewritten, the page facing those minutes we referred to?

A. They look exactly the same to me, the two of them. They are both on mimeograph paper.

Q. Well, are you familiar with the appearance of mimeograph printing on paper?

A. Oh, yes.

Q. Have you used it extensively in various work?

A. We had a machine in our office and we used to grind out reams of it, yes, sir.

Q. Would you say that that was a mimeographed sheet facing the minutes of July 18, 1950?

A. No, that looks like mimeograph to me and probably was submitted to every member.

Q. But it is your opinion that all of the minutes for July 18, 1950, were typewritten from examining them?

A. No, no; I am going to have—— [1520]

Q. It appears to be a mimeograph, doesn't it?

A. I am going to have to retract my statement and say that part other than the two lines, I believe, are mimeographed, yes, sir.

Q. In other words, you would say that the following sentence was typed in after they were mimeographed:

“Dr. Keyes moved, seconded by Dr. Lange, that the ruling of the Chair be confirmed. Motion carried.” A. Uh-huh.

Q. Just one more reference, Mr. Fullerton, to the minutes of an emergency meeting—I am read-

(Testimony of Charles E. Fullerton.)

ing from the title of an entry in Defendants' Exhibit 447—which reads as follows:

“Minutes of the Emergency Meeting of the Board of Trustees of the Walla Walla Valley Medical Society Held at the Marcus Whitman Hotel, November 28, 1951.”

Your name appears at the bottom of the first page as C. E. Fullerton, Executive Secretary. Do you know whether or not you prepared those?

A. Yes, sir, I did.

Q. There was just one entry here that puzzled me. It may not be too important. The meeting was obviously held, according to the date, on November 28, 1951, and I find [1521] the following paragraph:

“The Executive Secretary further explained that a copy of the brief had not been received by either the President, Secretary, or Executive Secretary of the society, nor had the society been advised of the hearing to be held in Los Angeles.”

This is referring to the brief in the Miles Robinson case. Then the following entry:

“That a copy of the brief had been received from the Washington State Medical Association.”

Do you remember whether or not you actually received a brief from Dr. Robinson on that matter?

A. From Dr. Robinson?

Q. Yes.

A. No, sir, I would say that that paragraph meant that we got one through regular mail later from the Washington State Medical Association, not from Dr. Robinson.

(Testimony of Charles E. Fullerton.)

Q. Well, the thing that I was concerned about was it states that the brief of the Washington State Medical Association was received by regular mail Thursday, November 29, 1951, and that you reported that at the meeting of November 28th. I just wondered if these minutes really [1522] truly reflect what occurred at the meeting. It may be just a mistake. No sense wasting a lot of time.

A. I can't answer.

Q. You can't explain that?

A. I can't explain, no, sir.

Q. Were there numerous instances, Mr. Fullerton, where the minutes of the society might have been changed or added to after the meeting for one reason or another?

A. Not that I can recall, no, sir.

* * *

Cross-Examination

By Mr. Kimball:

Q. Mr. Fullerton, I hand you what has been marked Plaintiff's Identification 53 and ask you if you know what that is?

A. Well, that is a letter from me to Dr. Robinson.

Q. Did you write the letter?

A. Yes, sir. [1523]

* * *

THOMAS RICHARD BROOKS

called and sworn as an adverse witness on behalf of the plaintiff, was examined and testified as follows:

Direct Examination

By Mr. Sembower:

Q. Will you state your full name, please?

A. Thomas Richard Brooks.

Q. Where do you live, Mr. Brooks?

A. 415 North Fifth Avenue, Walla Walla, Washington.

Q. And what is your occupation?

A. At this time I am an operator of a service station.

Q. At what location?

A. At Fourth and Pine, known as 410 North Fourth Avenue, Walla Walla.

Q. Mr. Brooks, you have lived in a number of different residences, have you not, the last few years?

A. I have lived in this present address from the 1st of May, 1950.

Q. Where did you live prior to that, if you recall?

A. At 1032 Valencia and 1016 Valencia, 215 North Madison.

Q. Is that one address or several [1526] addresses? A. No, three addresses.

Q. Three different locations? A. Yes.

Q. At approximately what times, periods, did you live at those three locations, if you recall?

(Testimony of Thomas Richard Brooks.)

A. I moved in April, 1949, to 1032 Valencia; in June, 1950, I moved to 215 North Madison; in December, 1950, I moved to 1016 Valencia; May the 1st, 1950, I moved—1951, I correct that—May the 1st, 1951, I moved to my present address.

Q. Mr. Brooks, I show you Plaintiff's Exhibit No. 18 and ask you if you have seen this before?

A. Yes.

Q. And what is that?

A. That is a statement that I signed that I made to the group of doctors on October the 11th, 1950.

Q. Do you know who prepared the copy which you signed?

A. The copy was presented to me in that form and I signed it after correcting.

Q. This is your signature here?

A. That is my signature.

Q. Now, I notice in the transcript the usual statement here for such statements on Page 8, Line 24, Miss Curts can go over her notes and you go over it very carefully and make any changes and she will fix it for you, and then I [1527] understand you to say that you made some changes on this?

A. There are several ink notations in there which are of my handwriting.

Q. Would you please point those out to us just so we will have the record clear?

A. That one is not mine (indicating).

Q. That is, the change on the first page?

A. On the personnel who was present, changed

(Testimony of Thomas Richard Brooks.)

as Dr. I. C. Bohlman. Doctor—I don't know what that is supposed to be.

Q. I don't, either.

The Court: If that isn't, go on to the ones that are yours then.

A. Line 13, there was an extra letter attached to the "that" and I just simply inked it out.

On line 21, this is Page 3, the word in there in the first original typing was "h-a-d" and it should have been "h-a-n-d."

The same alteration "h-a-d" to "h-a-n-d" is in line 12, on page 4.

On line 25 there is a word there with four letters which I crossed out. I couldn't make sense of it and I added in my own handwriting "cantankerous."

And there is on line 14 on Page 6, there was a figure before the "7" and I crossed that out because it [1528] was inaccurate.

And then there is a phrase here that I cannot understand because I have inked it out. That is on line 25, page 7.

On line 27, the word "doctor" is followed in the typed by the word "w-h-o-m" and I added in there in my own handwriting "w-i-t-h," "The doctor with whom I consulted," it reads.

And in line 28, you will find in my own handwriting the word "it," "i-t." "I did report it to him."

Q. Do I see a slight change up here in 12, also?

A. Oh, in 12?

A. Right here and up above, also?

(Testimony of Thomas Richard Brooks.)

A. I crossed that out.

Q. Yes.

A. In line 6, between the words "treatment" and "hand," I have added the word "to."

And on line 12, at the end there is a word there that was in error and I crossed it out. I didn't do that (indicating).

Q. Didn't put the circle around the 20 there?

A. No. That is all the alterations that I have on that. Yes, that is correct.

Q. Thank you, Mr. Brooks. And that is all the alterations that you made? [1529] A. Yes.

Q. Mr. Brooks, when did your wife first begin to display any symptoms of the disease which she went to Dr. Robinson for treatment of, if you recall? A. I don't understand your question.

Q. Well, your wife went to Dr. Robinson for treatment and the testimony so far indicates that she had a slight paralysis or a paralysis in one leg and possibly in one hand and she walked with a cane, and I wondered when you first observed that she had any difficulties along those lines?

A. Dr. Robinson was not the first doctor that attended my wife.

Q. Well, that is not exactly what I asked you. I asked you when you first observed them, if you remember? A. Back in 1948.

Q. And where was that?

A. That was when we was living in Umatilla.

Q. How did you first observe the onset of this malady?

(Testimony of Thomas Richard Brooks.)

A. Well, it appeared that some injury had been done to her left hip which caused her to have a drop in her left foot, the result of falling on the ice outside an apartment on East Poplar in the early days of January, 1948.

Q. And then she went to a doctor, did [1530] she? A. She went to Dr. Campbell.

Q. Oh, she came up here to Walla Walla and saw Dr. Campbell?

A. Yes, we were living here at that time in January, 1948.

Q. Did she have any treatment shortly after her fall?

A. No; it wasn't apparent until about the—I think it was somewhere in the region of May.

Q. When did she have the fall on the ice, if you recall?

A. January, in the early days, somewhere around the 3rd or 4th of January.

Q. And then she went to Dr. Campbell after she came up here? A. Yes.

Q. How long did she go to Dr. Campbell?

A. She went to Dr. Campbell, as far as I can remember, two or three times.

Q. Do you remember the treatments that he administered to her? A. No.

Q. Were there other members of your family, Mr. Brooks, who went to Dr. Campbell for doctoring?

A. Yes; I think my youngest daughter went to

(Testimony of Thomas Richard Brooks.)

him back in 1946, soon after she arrived in this country.

Q. And her name was?

A. Her name is Mrs. William Emilio Lepiane. Her name is [1531] known as Audrey Lepiane.

Q. And were there any other members of the family that went there?

A. Not up to 1948, no.

Q. Well, I mean between the time that went to Dr. Campbell?

A. I, personally, went to Dr. Campbell for a cold.

Q. That is, you went to Dr. Campbell for a cold?

A. Yes, in December of 1947.

Q. And any other members of your family treated by him?

A. I don't know of any others than my youngest daughter, my wife, and myself.

Q. By the way, could you give us a summary of the members of your family?

A. Well, I have three daughters. The eldest one is Enid, E-n-i-d. She is divorced and her name is now back by deed to Brooks. She is known as Enid Brooks and lives with me. My second daughter is Joyce Edwards, wife of Noel Burton Edwards, living at 1254 Bell Street, Walla Walla. My youngest daughter is Mrs. W. E. Lepiane, known as Audrey Lepiane, living at 1327 Olive Street, Walla Walla.

My eldest daughter has no family; my second daughter, Mr. and Mrs. Edwards, my son-in-law, have one daughter, known as Noeline, N-o-e-l-i-n-e;

(Testimony of Thomas Richard Brooks.)

my youngest daughter has three children, Susan, the eldest; Alicia [1532] Jane, and the youngest, Judith Ann. And that is all of my immediate family.

Q. Mr. Brooks, to what doctors had you personally been during the year before, say, August of 1950, if you recall?

A. I hadn't been to any doctor.

Q. You had not been to any doctor?

A. Other than to Dr. Robinson in March, early March, to have a blood test, which was taken by his nurse, and on May the 2nd to have a blood test taken by himself.

Q. Had you been to any other doctors for illnesses other than the cold you testified to?

A. I just omitted to remember that on January the 22, 1950, I fell on the ice and broke my left wrist and went to Dr. Wallace Pratt.

Q. Oh, yes. So that you went to Dr. Wallace Pratt in January, 1950?

A. Yes, for the fracture.

Q. Do you remember the date?

A. January the 22nd.

Q. And how did you happen to go to Dr. Pratt?

A. I went up in the elevator in the Drumheller Building ostensibly to go to Dr. Campbell and, finding Dr. Campbell was not there, the nurse referred me to the next door doctor who was Dr. Wallace Pratt.

Q. Was Dr. Campbell just out for the day or something of [1533] that sort?

(Testimony of Thomas Richard Brooks.)

A. He was sick.

Q. He was sick?

The Court: When was that, in January, 1950?

A. '50.

Mr. Sembower: January, 1950.

The Court: All right.

Q. (By Mr. Sembower): How often did you go back to see Dr. Pratt with your broken wrist?

A. Well, he rushed me off to the hospital and put it in a plaster cast, set it, and I stayed in the hospital for a few hours, then I went home. And I think it was about ten days or a week, I think I made practically four or five visits to him and then eventually one to the hospital to have the cast removed and a couple of times after. I can't give you the exact number truthfully, because I have—only give them approximately.

Q. In your visits to Dr. Pratt's office, did you meet any other doctors there?

A. Not that I have any knowledge of.

Q. Mr. Brooks, when did you first learn that you might have syphilis?

A. (No response.)

Q. When did you first learn that you might have syphilis? A. I might have? [1534]

Q. Yes. A. I don't understand.

Q. Well, when did you first learn that you did have syphilis?

A. I don't still understand the question.

Q. Well, did you learn at any time that you had syphilis?

(Testimony of Thomas Richard Brooks.)

A. I was informed that the first blood test taken in Dr. Robinson's office by Mrs. Andrew, his nurse, had come back positively showing syphilis present in the blood.

Q. When were you informed about that?

A. About, I should think, somewhere in the region of St. Patrick's Day.

Q. How were you informed of it?

A. I was informed by my wife, who had been to see Dr. Robinson.

Q. Then did you do anything about that?

A. No, I didn't believe it, and I don't believe it now.

Q. You don't believe that you had syphilis at that time?

A. No.

Q. On what do you base that belief?

A. I have led too much of an active life to have had anything like a medical difficulty of that kind that wouldn't have done me some injury

Q. Did you have syphilis, Mr. Brooks, when you came into the country? I am merely asking you because I believe [1535] they take a routine test, do they not?

A. I passed through the ordinary routine test in March 31, 1947, through the American Consulate in Grovenors Square, London, and I passed through the normal test at the entrance into New York on July the 15th, 1947, and nobody on those occasions ever informed me I had anything wrong with me. I was given a clean bill of health.

(Testimony of Thomas Richard Brooks.)

Q. Do you recall whether any blood tests were taken of you on those occasions?

A. They were.

Q. And you received no reports on those occasions showing that you ever had any infection of any kind?

A. None whatever.

Q. Now, those are the tests to which you referred when you told Dr. Robinson that you had had negative tests when you came into the country, is that correct?

A. I don't ever remember referring to any particular tests to Dr. Robinson. I told him I had had several tests during my life and I had never yet had anything of what he told me I had got. That is the best of my knowledge.

Q. And you told him that in one of the conversations there on that week end, is that correct?

A. No, months before that.

Q. Do you remember telling him that on that week end?

A. I repeated part of that, but not all [1536] of it.

Q. But you did say to him words to that effect that week end?

A. Now, I want to know what conversation you are referring to?

Q. Well, was there any conversation that week end in which you said that to him?

Mr. Rosling: What week end, counsel?

Mr. Sembower: That is the week end of October the 8th and 9th.

(Testimony of Thomas Richard Brooks.)

A. October the 8th was on a Sunday and October 9th was on the Monday. Dr. Robinson phoned me on October the 7th.

Q. Yes. Well, now, in your conversations with him on the 7th and 8th——

A. When he said——

Q. Now, wait a minute. Did you, in those conversations, inform him that you had had a negative test when you came into the country?

A. I told him this, and you will find it in that statement, that I had a negative test coming into the country.

Q. That is the conversation?

A. That was the conversation.

Q. All right, now, Mr. Brooks, you have told about, I believe, the first blood test, is that correct, that was taken of you? Did you go into his office again?

A. When was this first blood test supposed to be taken? [1537]

Q. Well, that I don't know, I am asking you.

A. Well, which test are you referring to?

Q. Do you recall when the conversation was you have just testified to where your wife told you that the result was positive?

A. You are referring to the one in March, 1950?

Q. That's right, thank you.

A. That is correct. Can I answer that one?

Q. Well, I don't know what the answer is. Were you informed——

A. That was the one I had, yes.

(Testimony of Thomas Richard Brooks.)

Q. Now, were you informed of another test that had been taken before or after, or were you informed of another test?

A. I had another test taken by Dr. Robinson himself on May the 2nd, 1950.

Q. All right, and were you informed of the results of that? A. Only by my wife.

Q. And what was the information you got as to that?

A. Again it had come back positive, the doctor had informed her.

Q. And did you do anything after that?

A. Nothing whatever, because I still repeated I didn't believe it.

Q. And the basis on which you didn't believe it is the same [1538] as you said before?

A. Perfectly.

Q. Well, now, Mr. Brooks, you testified in one of your depositions that at some time in the past you had been, I think, associated with a military company or something where there had been——

A. I had been the camp sergeant major or warrant officer in charge of a field punishment camp in the first World War in which we had many personnel under my control and my jurisdiction who were suffering from this disease and other venereal diseases, and, while I am not a doctor or a medical man, I had certain instructions as to certain actions to see and make certain that were taken by those suffering from it that I did. I did not know what had to be done.

(Testimony of Thomas Richard Brooks.)

Q. Mr. Brooks, do you still believe that you never had it?

A. Not in the way put out by Dr. Robinson, yes.

Q. Well, all right, but your answer doesn't quite answer it. You say not in the way that he put it; well, in what way, then?

A. I was informed by another doctor, who took a test from me on October the 9th, 1950, that there was a slight presence in the blood.

Q. Yes, and who was that?

A. That was Dr. Peter Brooks. [1539]

Q. And that was on October the 9th?

A. October the 9th.

Q. And what—— A. 1950.

Q. And what did you do after that?

A. When he informed me, I asked him, well, what could we do about it, and he suggested certain treatments and I took those treatments.

Q. And what was the result, if you know?

A. The result was he took a spinal test and it was negative.

Q. You had a positive before that?

A. The test was a spinal that he took.

Q. And it turned out positive?

A. Slightly, yes.

Q. And then you took the treatments and it turned out negative? A. Yes.

Q. Why did you go to Dr. Peter Brooks on the 9th of October? A. Because I wanted to.

Q. Was there anything caused you to want to?

A. Yes.

(Testimony of Thomas Richard Brooks.)

Q. What was that?

A. I just wanted to, because with the statement that the threat I had had heaved at me——

Q. Now, wait a minute, I am asking [1540] you——

A. Well, you are asking me and I am telling you.

Q. Because of these discussions that you had with Dr. Robinson, you went and had the test, is that correct?

A. Because of the threat made to me by Dr. Robinson in the telephone conversation when he called——

Q. I asked you——

A. Wait a minute——

Mr. Sembower: That is not properly responsive, I ask that that be stricken.

The Court: Well, I am not sure. You asked him why he went. Shouldn't he have the right to tell you why, then? Is that what you are doing?

A. That is, yes.

The Court: Why you went?

A. Yes, it is purely the truth.

The Court: Well, because of the threats made. All right, go ahead.

Q. (By Mr. Sembower): Of course, the threats are your own word, is that not correct?

A. I am repeating the word "threat" was used by me when the doctor said this.

Q. Yes.

A. You asked me about the threat.

(Testimony of Thomas Richard Brooks.)

Q. Wait. I haven't asked you about the threat.

The Court: No. It is his conclusion, I appreciate [1541] that.

Q. (By Mr. Sembower): Mr. Brooks, is it not a fact you had both a positive blood and positive spinal in your tests with Dr. Brooks?

A. I think he took three tests, I can't quite remember. If the doctor said I had three tests, then the doctor is right.

Q. Now, Mr. Brooks, did you resent the knowledge that you had received that you had a positive test?

A. I certainly didn't feel happy about it. I certainly did not feel very happy about it.

Q. Were you angry about it?

A. No; I certainly didn't feel happy.

Q. Now, actually, Mr. Brooks, when you went in to have your tests in Dr. Robinson's office, you were not very happy about it then, were you?

A. Well, are you using them singular or plural?

Q. Well, we will take the first one, then. You were not very happy about that, were you?

A. I was quite happy about that, because the lady that took it was a personal friend of our family, Mrs. Andrew, and still is.

Q. You mean the nurse who was there?

A. The nurse there, Mrs. Floyd Andrew.

Q. And when did you first get to know Mrs. Floyd Andrew; is [1542] that it?

A. Yes. Around December, 1947, in the church at St. Paul's Episcopal here.

(Testimony of Thomas Richard Brooks.)

Q. So you weren't angry with her?

A. I wasn't a bit angry.

Q. Well, now, the second time you went in, were you angry then?

A. I was not angry with anybody else except the doc, who had kept me waiting 40 minutes.

Q. You were angry with him for keeping you waiting 40 minutes?

A. Yes, and so would you be, I guess.

Q. Mr. Brooks, did you tell Dr. Robinson in one of the conversations on either the 7th or 8th of October, 1950, that he had used your wife as a guinea pig?

A. I did.

Q. That was your belief?

A. That was my conviction.

Q. How long had you entertained that conviction?

A. About six months.

Q. And what was the basis of that conviction?

A. Because I got tired of seeing her having a needle pushed into her about every four hours for 120 shots.

Q. Do you know what the needle was for?

A. Penicillin, I was told. [1543]

Q. Who was pushing the needle into her?

A. My daughter Enid, on the instructions of Dr. Robinson.

Q. That is, Dr. Robinson had instructed your daughter how to administer the medicine, hadn't he?

A. He came and showed her, yes.

Q. Well, Mr. Brooks, wasn't that actually an

(Testimony of Thomas Richard Brooks.)

outstanding economy for your family to be able to administer that yourselves?

A. I wasn't made aware of it in that way.

Q. As a matter of fact, the bill for the injections done by your daughter was about \$75.00, as compared to what it would have been at about \$500.00, was not that true?

A. I never had it pointed out to me that way and I did not understand it so.

Q. There is a possibility that that is true, isn't it?

A. I haven't got into the cost of having it done in the doctor's office as compared to being done at home. I have never had it explained to me.

Q. Now, when did you first begin to feel that your wife was being used as a guinea pig?

Q. When did I what?

Q. You said that you began to feel about six months before this October, is that correct?

A. Yes.

Q. Did you resent that? [1544]

A. I didn't like to see her—she was—the thing was this, that my wife was very low in physical stamina, caused by the various things that she was having treated, being treated with, for instance, drugs that were being given by treatment, and with all these penicillin shots, and when you love a person and live to know and respect them, you can't stand idly by and coldly accept what they are having done to them as being good when you see them

(Testimony of Thomas Richard Brooks.)

suffering worse after they have had it than they were before.

I ask you, as a human being, that was a little bit beyond even the hard head that I might be myself. I couldn't stand it. And that is why I objected to her being experimented with.

Q. Now——

A. Because on one occasion——

Q. Now, as a matter of fact, Mr. Brooks, you don't have much use for doctors generally, do you?

A. I don't know what you base that question on. I can't answer it.

Q. Well, is it true? A. It isn't.

Q. How do you hold doctors, in esteem?

A. I do.

Q. Well, now, Mr. Brooks, what doctors have you had contact [1545] with in this community?

A. I have had contact with I couldn't tell you the number.

Q. Well, a large number? A. Yes.

Q. Well, now, on what occasions have you had contact with these doctors?

A. Social and many other ways.

Q. All right. Now, describe to us some of the occasions when you have had contact with these doctors socially.

A. Well, you go to a Chamber of Commerce meeting, you meet them; you go to a Lyons Club meeting, you meet them; you go to church, you meet them; you go to a ball game, you see them.

(Testimony of Thomas Richard Brooks.)

Q. Well, now, what doctors have you met at the Chamber of Commerce?

A. I couldn't give you that, not truthfully. I have met quite a few. I couldn't itemize each doctor by name.

Q. What other social occasions have you met doctors?

A. I met them at Masonic and fraternal organizations.

Q. How long have you met them at the Masonic and fraternal organizations?

A. About six years.

Q. What Masonic Lodge do you belong to?

A. I belong to the Blue Mountain Lodge No. 13.

Q. And you know the membership there pretty well, do you [1546] not?

A. Fairly well, yes.

Q. Well, now, what doctors in this community belong to that lodge?

A. I would rather not answer that. Do I have to answer that, sir?

The Court: Well, I think so, yes, you should answer that.

A. There are several. I can't name them all.

Q. Well, name the ones that come to mind.

A. Oh, there is the dentist, Dr. Wood——

Q. I mean, who are they, Mr. Brooks?

A. I know Dr. Wood, Dr. Sam Page. I know quite a few but just at this moment I can't think of their names.

(Testimony of Thomas Richard Brooks.)

Q. Well, now, you mentioned you knew some doctors in the lodge? A. I do know some.

Q. Well, now, you surely remember the names of some others?

A. I don't say all of them are in the Masonic Lodge.

Q. Well, now, what is another organization?

A. In church.

Q. All right, now, what churches do you attend?

A. I have been attending the Episcopal Church, St. Paul's, and I have attended the Methodist, I have attended the Baptist. [1547]

Q. Well, now, in your attendance on those churches, what doctors have you gotten to know there? Did you have much opportunity to get to know doctors there? After all, just before and after service, wasn't it?

A. Well, I just know that they are doctors, but I don't have a conversation with them every time I go.

Q. But have you ever actually met any doctors in those churches? A. Yes.

Q. Well, who have you met there?

A. I have met Dr. Bob Jamieson, Dr. Beck, and Dr. Balcom Moore.

Q. Where did you meet Dr. Balcom Moore?

A. I met them all in church.

Q. Well, any other places besides churches that you met these doctors?

A. Well, I met them in the Chamber of Com-

(Testimony of Thomas Richard Brooks.)

merce when I have been there.

Q. And who did you meet again at the Chamber of Commerce?

A. Well, some of the same doctors, as well as I have already named.

Q. Can you think of any other names?

A. I could if I had a list, yes, I could tell you, but I can't just name them off.

Q. Well, let's see. I have physicians and surgeons here; just [1549] go down the list and see if you have met any of these doctors now.

What about Dr. Beaver?

A. Yes, I know Dr. Beaver. He attended my daughter.

Q. When did he attend your daughter?

A. Oh, back in 1950, '49, '48.

Q. Which daughter was that?

A. My youngest daughter.

The Court: What was that name?

Mr. Sembower: Beaver.

The Court: Beaver?

A. Yes.

Mr. Sembower: Beaver, B-e-a-v-e-r.

The Court: Oh, all right.

Q. (By Mr. Sembower): Dr. Bohlman?

A. I have met him twice.

Q. Where did you meet him?

A. At this here inquiry.

Q. That is, in connection with the hearing?

(Testimony of Thomas Richard Brooks.)

A. Well, I had met him.

Q. And, of course, Dr. Peter Brooks, you met him for treatment? A. Yes.

Q. Had you met him before you went to him for treatment? A. No. [1550]

Q. And Dr. Robert A. Campbell?

A. I have met him once when talking to him about PTA work.

Q. Now, Dr. Leroy O. Carlson?

A. I don't remember ever having had any conversation at all with him except when he was in this thing.

Q. Dr. Cowan? A. Dr. Cowan?

Q. Harry C. Cowan?

A. Harry C. Cowan, I happened to go and see him once on busines.

Q. What did that business involve?

A. That involved insurance inquiries.

Q. Were you at that time employed in the insurance business?

A. I was employed as an investigator.

Q. Of what did that work consist?

A. Well, making reports on claims and applications for insurance.

Q. What insurance company were you working for? A. That is supposed to be confidential.

Q. Well, did it deal with the medical bureau in any way? A. It did not.

Q. Well, now, in connection with that type of work, why did you go to see doctors?

(Testimony of Thomas Richard Brooks.)

A. Who?

Q. In connection with that type of work, why did you go to [1551] see doctors?

A. Well, in the case of a person claiming insurance, like making an application for a \$25,000.00 coverage, they sent out an inquiry sheet to an investigator, that is me, and I am supposed to find out all about the background of the applicant. And when a man has had medical attendance for this or that and he, for instance, now——

The Court: Is that in connection with life insurance investigation? A. Yes.

The Court: It is quite obvious what the connection would be.

Mr. Sembower: Yes.

Q. Dr. Walter—I think I asked you about Harry C. Cowan? A. Harry Cowan, yes.

Q. What about Dr. Walter C. Cowan, did you meet him? A. I met him once.

Q. Where did you meet him?

A. In his office.

Q. Was that in connection with treatment?

A. In business.

Q. This same business you have been relating?

A. Yes. Dr. John R. Cranor?

A. I met John R. Cranor when I met—I used to go to the penitentiary quite regularly and one of the functions [1552] up there I met John Cranor, Sr., and I was introduced to John Cranor, Jr.

Q. They are both doctors?

(Testimony of Thomas Richard Brooks.)

A. No, John Cranor, Sr., was the warden at the penitentiary.

Q. Oh, I see, and this is John Cranor, Jr.?

A. Who was his son.

Q. What about Dr. A. W. Ely?

A. Never met him.

Q. What about Dr. George A. Falkner?

A. I met him once on business.

Q. On business. This same business you have been mentioning? A. Yes.

Q. Dr. C. R. Garrett?

A. C. R. Garrett is dead.

Q. Dr. Elmer Hill? A. He is dead.

Q. Dr. Herman Hindin?

A. Never met him.

Q. Dr. Hogenson?

A. Never met him. Hogenson or Hoganson?

Q. It is H-o-g-e-n-s-o-n.

A. Hogenson. I met him twice.

Q. Where did you meet him?

A. In his office. [1553]

Q. In connection with business? A. Yes.

Q. W. F. Holmes? A. Also the same.

Q. Dr. Miles Hopkins?

A. I don't remember having met him.

Q. Dr. C. J. Johannesson?

A. I met him several times.

Q. Where did you meet him?

(Testimony of Thomas Richard Brooks.)

A. Having X-rays done on myself and also on business.

Q. Dr. Harlan P. Kahler?

A. Do you mind——

Q. K-a-h-l-e-r? A. Never met him.

Q. Dr. Ralph S. Keyes?

A. I met him several times, both Chamber of Commerce, and that is another function I can't quite remember. I know it was somewhere else.

Q. Dr. Alvin R. Kincaid?

A. Never met him.

Q. Dr. E. O. King?

A. Yes, he attended my second daughter and her husband and I have been present when he has attended them.

Q. Dr. A. E. Lange?

A. I have met him at the inquiry here. [1554]

Q. On any other occasions? A. No.

Q. Did he belong to any of these clubs you belong to?

A. He does, but I can't quite remember which one it is.

Q. Some club, however. All right, what about Dr. John C. Lyman?

A. I have met him twice.

Q. And you testified about Dr. Balcom Moore. Dr. Sam Page. Dr. C. Don Platner?

A. Yes, I met him.

Q. Where did you meet him?

A. I met him when I went to see him about an

(Testimony of Thomas Richard Brooks.)

accident in which a fellow had had a fracture. That was on business.

Q. Dr. John E. Potts?

A. I don't remember having had a conversation with him other than on the phone.

Q. You went to see Dr. Pratt, of course, in January. Did you meet him on any other occasions?

A. I met him several times around the street and I also met him at his home seeing that I sold him two pieces of domestic appliances.

Q. When was that sale made?

A. About 1949.

Q. What was the appliance? [1555]

A. I believe one was a washer and the other was a range.

Q. Dr. F. L. Ralston?

A. I seem to remember I have met him, but I can't just recollect.

Q. Is it possible that he is one of the clubs or churches?

A. Well, somewhere around.

Q. Well, you met Dr. Robinson, no question about that. Dr. J. T. Rooks?

A. Spell that.

Q. Have you met him?

A. Spell that, would you?

Q. R-o-o-k-s?

A. He lives in College Place. I can't say that I have met him other than spoke to him on the telephone.

Q. Did you discuss this case with him?

(Testimony of Thomas Richard Brooks.)

A. No, sir.

Q. Dr. Merrill Smeltzer? A. Yes.

Q. In what connection have you met him?

A. I met him in St. Mary's Hospital when he took a spinal of my wife, 1948.

Q. Was she at that time going to see him?

A. She went to see him, yes.

Q. And how long did she continue making calls on his office?

A. I couldn't tell you. It was several [1556] months.

Q. Was that before or after the fall on the ice?

A. That was the year of the fall.

Q. When was this spinal taken, if you recall?

A. It was taken, I should think, somewhere in the region of the latter end of August or early September.

Q. And then she had the fall that winter?

A. She had the fall the January before.

Q. Oh, the January before. Dr. R. W. Smith?

A. Don't know him.

Q. Dr. Ralph W. Stevens?

A. I met him, yes.

Q. Where have you met Dr. Stevens?

A. In the Chamber of Commerce.

Q. In any other organizations?

A. Not that I can remember.

Q. Dr. Morton W. Tompkins?

A. I met him also on business.

Q. In what connection, with what business?

(Testimony of Thomas Richard Brooks.)

A. The same, insurance.

Q. Met him on a number of occasions?

A. Oh, I had several cases I had to go and get certain information so I could complete reports.

Q. When did those cases occur?

A. Oh, anywhere in the region from 1948, latter end of '48, to the beginning of '52. [1557]

Q. And Arthur A. Yengling?

A. Yes, he operated on me in August, 1951.

Q. What was that operation for?

A. Arising out of an accident in which I had been knocked down by an automobile.

Q. Well, now, Mr. Brooks, I believe it was on October the 9th, was it not, that you called Mr. Fullerton?

A. That's right.

Q. Did you know he was not a doctor?

A. I did.

Q. Had you ever met Mr. Fullerton on any other occasion?

A. Never met him at all.

Q. How did you know of his existence?

A. Well, having heard so much in the previous three or four days about this letter of September the 30th and the demands made on me by Dr. Robinson——

Q. Well, no, Mr. Brooks——

A. Wait a minute, that letter was signed by Mr. Fullerton.

Q. Oh, was that why you went to see him?

A. I wanted to know the signator of it.

(Testimony of Thomas Richard Brooks.)

Q. The signator?

A. Was Mr. Fullerton.

Q. About what time of day on October the 9th, Mr. Brooks, did you call Fullerton?

A. I can give you the exact. [1558]

Q. All right, what is it? A. Around 8:30.

Q. Why do you remember it so exactly?

A. Because I was definitely anxious to get in touch with him.

Q. And you felt that 8:30 was the best time to get in touch with him?

A. Well, I wanted him to get up in the morning and be up when I called him and I wanted him to be available.

Q. Where did you call him, at his office?

A. I called him at his home.

Q. Why did you call him at his home instead of his office?

A. Because I had to be at a business appointment around ten to 9:00 and I wanted to call before.

Q. Well, how long a conversation did you have with Mr. Fullerton?

A. I should say roughly around about ten or twelve minutes, not more.

Q. In that conversation with Mr. Fullerton, did you mention the word "syphilis"?

A. I don't recall.

Q. What did you do after you talked with Mr. Fullerton? A. I went to work.

Q. Well, then, what did you do after that?

(Testimony of Thomas Richard Brooks.)

A. After I got to work, I called up Dr. Brooks' office when [1559] it opened at 9:00 and asked for an appointment with the doctor.

Q. Now, how did you happen to go to Dr. Brooks?

A. Well, because he is the same name as me and he belonged to the same office that my daughter had had attention from from Dr. Beaver. That is why.

Q. Oh, was that the reason why or because he had the same name as you?

A. Well, partly that, too.

Q. Because he had the same name?

A. Yes.

Q. And then when did you have an appointment with Dr. Brooks? A. 10:30 that morning.

Q. Now, was your wife at home at that time?

A. My wife was in Spokane.

Q. When had she gone to Spokane?

A. The evening before.

Q. Did you tell Dr. Brooks that she was in Spokane?

A. I didn't tell him as soon as I got there, no.

Q. Well, but did you tell him?

A. I told him during the time I was there, yes.

Q. And did Dr. Brooks recommend then that she see a physician in Spokane?

A. No, not right like that. [1560]

Q. Well, how did he say it?

A. Well, I was talking to him about my wife's

(Testimony of Thomas Richard Brooks.)

condition and I said I was greatly concerned and she was in Spokane, I felt it would be a good opportunity to find out, if I could, the method in which or where I could get some expert advice.

Q. And what did he say to that?

A. He said, well, he had a friend who was a doctor of nervous diseases and disorders in Spokane, and I said, "That's fine, my wife is up there at this time."

Q. And who was that? A. Dr. Lewis.

Q. And what did Dr. Brooks do, call Dr. Lewis?

A. No, Dr. Brooks said that he would write to Dr. Lewis and inform him that my daughter would be contacting him with a view of making an appointment for him to see my wife and examine her.

Q. Which daughter was that? A. Enid.

Q. Was she living in Spokane at the time?

A. She was living in Spokane, had been living there about three weeks.

Q. You don't have a copy of that letter, do you?

A. Not of Dr. Brooks' letter, no. I understood——

Q. I thought he might have sent you a copy along with the [1561] letter he sent.

A. I never asked for it.

Q. Now, did you discuss with Dr. Peter Brooks the grievance which you thought you had against Dr. Robinson? A. I don't think so.

Q. Did you say anything to him about it?

A. I don't remember.

(Testimony of Thomas Richard Brooks.)

Q. You don't remember whether you discussed this with him or not?

A. Not to the extent of making particular reference to it.

Q. Well, did you make any oblique or incidental reference to it?

A. I made reference that I had been threatened by a doctor and I had been thinking very seriously about approaching the medical society.

Q. Did you tell Dr. Brooks why you had decided to come to see him?

A. No, I didn't. I didn't say, "Because you got the same name as me or that you are associated with Dr. Beaver" in as many words, no.

Q. Is there any reason, Mr. Brooks, why you don't remember this as clearly as the moment you called Mr. Fullerton?

A. Because I don't think I did discuss it with him, that is why.

Q. But you aren't sure you didn't? [1562]

A. Well, when you ask me in the way you do, I'm not sure.

Q. Now, Mr. Brooks, at the time that you called Mr. Fullerton, did you know that your daughter had gone in to see him some time before in connection with that episode of your granddaughter swallowing something?

A. I did.

Q. When did you first learn about her doing that?

A. When? On October the 5th, I had a general

(Testimony of Thomas Richard Brooks.)

reference to it in conversation, but I had never had or never troubled to get any detail because the child had appeared all right and I hadn't had any occasion.

Q. Now, do you remember about the time when the child swallowed the substance?

A. I don't because I was not informed until some days after, as far as I can remember.

Q. The child was actually in your home at the time, wasn't it?

A. That is what I learned, yes.

Q. Who was staying with the child?

A. Who was staying——

Q. Who was staying with the child in your home?

A. The thing was we were moving from 1032 Valencia to 215 Madison and the things were all packed up out in the medicine chest and these boxes of Ex-Lax was in the bath on the floor ready to be loaded up in the pickup, and [1563] it was there that the child, I understand, got hold of them.

Q. Well, now, you weren't actually there, were you? A. I wasn't there.

Q. Were they your Ex-Lax pills?

A. They were, they belonged to the family.

Q. Who told you about the incident?

A. I couldn't quite tell you exactly who did. I can't pin point the exact person. I think my wife mentioned it to me quite casually.

(Testimony of Thomas Richard Brooks.)

Q. When did it happen, to the best of your knowledge, what time of day?

A. I have no recollection until I heard it given here in the statement by yourself; that is, it was in June.

Q. Was your daughter employed somewhere at that time? A. Which daughter?

Q. The one who was the mother of the child?

A. Mrs. Edwards?

Q. Mrs. Edwards. A. Yes.

Q. And where was she working, if you recall?

A. She was working for a doctor, for Dr. Ralph Smethurst, as a dentist's nurse and receptionist.

Q. Do you know her hours of employment?

A. I think she went to work at 8:30 and was through at 5:00, [1564] with a break of 12:00 to 1:00 for lunch.

Q. To your knowledge, was this incident when she came home? A. I couldn't tell you.

Q. Where were you working at the time?

A. I was working for A. M. Jenson, now known as the Bon Marche.

Q. What were your hours of employment?

A. All hours that God sent and could give.

Q. What was that?

A. All hours that God sent and anything that I could get.

Q. I don't quite understand that?

A. Well, it means to say that I would be out

(Testimony of Thomas Richard Brooks.)

some nights until 11:00 or 12:00 o'clock and I would be out some mornings as early as 6:00, whenever I could get business. I was a salesman.

Q. On this particular day, do you remember when you got home? A. I don't.

Q. Had your daughter discussed with you the matter of filing this grievance of hers about the dollar and a half?

A. To the best of my knowledge, she never discussed it with me as a set subject.

Q. But she did discuss it with you, incidentally?

A. She may have made reference to it.

Q. Now, it happened in June, and did she ever express to [1565] you her concern about the amount of the bill?

A. Well, during the talk about this letter, yes.

Q. Well, had she mentioned it to you before that?

A. I don't think she had ever mentioned it much except that it was a charge the doctor had sent her for a bill. She may have mentioned the amount, I do not remember, because I am so vague on what was actually said, when the conversation was, but it was in general conversation and I didn't have any knowledge that it was a serious matter and I paid no particular attention at that time.

Q. Do you remember about when she did make that statement to you about the bill?

A. I know she made a definite statement to me on October the 5th after Dr. Robinson had been out to our house.

(Testimony of Thomas Richard Brooks.)

Q. What about prior to that?

A. No; other than in general conversation.

Q. Well, what general conversation?

A. I don't—it was just general conversation. It had been referred to before or briefly mentioned. I didn't know too much about it and I never even—I didn't know sufficient about it to especially be interested.

Q. Did she mention it to you shortly after the incident occurred?

A. Not to the best of my knowledge.

Q. Did she mention it to you about the 1st of July? [1566]

A. I do not think so because that was too close on the date given to be that it was mentioned. It was along later than that.

Q. Mr. Brooks, were you concerned over the possibility that maybe you had communicated this disease to your wife? A. No, sir.

Q. You said a little while ago you were annoyed and concerned. What did annoy you or concern you about it? A. What?

Q. What did annoy you or concern you about these things?

A. Because I felt so positive in my own mind that I hadn't.

Q. Now, Mr. Brooks, you talked with Mr. Fullerton at the Medical Service office, is that correct?

A. When?

(Testimony of Thomas Richard Brooks.)

Q. On the morning of October the 9th, around about 8:30? A. No, sir.

Q. I thought you testified to that. Have I got the wrong date?

The Court: He said he called him at his home.

Mr. Sembower: Oh, I'm sorry.

Q. You talked to him at his home?

A. I called him at his home telephone. I take it that was his home.

Q. And what did you do then after that with reference to [1567] the complaint?

A. I did nothing.

Q. What did Mr. Fullerton tell you?

A. He told me he would consult with the power that would be, as it were, and let me know.

Q. Did he refer to who those powers that be were? A. No.

Q. If you know, why didn't he ask you to come in the way your daughter did?

A. I can't answer that.

Q. Well, then, when did he get in touch with you again? A. About 12:30 on the 10th.

Q. Had you in the meanwhile made any telephone calls to him?

A. None whatever, other than that first one.

Q. And then on the 10th, when did he get in touch with you? A. About 12:30.

Q. And how did he get in touch with you?

A. In person.

Q. Where were you at the time?

(Testimony of Thomas Richard Brooks.)

A. I was in the basement of A. M. Jenson's Store.

Q. Was there anyone else present?

A. Not actually present. They were in the other part of the building, yes.

Q. Did anyone accompany Mr. Fullerton to see you? [1568]

A. No.

Q. Well, what did he say to you on that occasion and what did you say to him?

A. He said—he introduced himself, because up to that moment I had never seen Mr. Fullerton in the flesh, to the best of my knowledge. Introduced himself, he said he had talked with his president, Dr. Page, and they would be glad to hear me, what I had to say, if I would be at their office in the Drumheller Building at 5:30 on October the 11th, and I said, "I will be there."

Q. Did he say anything about your bringing any people along or anything of that sort?

A. No. I said, "I would like to have a stenographer to take the notes down verbatim."

Q. And what did he say?

A. He said, "Well, perhaps we can fix that."

Q. Did he on that occasion ask you to write out any complaint?

A. He did not.

Q. Did you ask him who would be present?

A. No, I did not.

Q. Did he make any explanation of why he was calling together a group of people?

A. No.

(Testimony of Thomas Richard Brooks.)

Q. Did he describe them as officers or [1569] trustees?

A. No, he said there would be several there.

The Court: Was that to be at Dr. Page's office?

A. No, that was the office of the medical society.

The Court: Oh, the medical society.

A. In the Drumheller Building.

The Court: Yes, all right.

Q. (By Mr. Sembower): Where did he say the meeting would be?

A. Would be in the offices of the medical society in the Drumheller Building. He gave me the room number. I can't give it to you now. I think it is 200 something.

Q. And then did you attend that meeting?

A. I attended there as requested.

Q. And who was present, if you recall?

A. The names as per that list, exhibit, you just showed me.

Q. Do you have any independent recollection of who was present?

A. I know that Dr. Page, Dr. Tompkins, Bohlman, Dr. Yengling, Dr. Lange, and, I believe, another one there, I can't quite remember his name. And Judd Kimball and Miss Curts, Mr. Fullerton.

Q. Well, you knew most of these men, didn't you?

A. I never knew any of them other than Mr. Fullerton.

Q. You testified a moment ago that you met them all?

(Testimony of Thomas Richard Brooks.)

A. Yes, but all since. I didn't know them at that time. [1570]

Q. You said you had been engaging in the insurance business since '48, did you not?

A. Yes, but I had never met all these.

Q. But you had met some of them, had you not?

A. I hadn't met those particular—I hadn't met them, not those particular doctors.

The Court: I didn't get that?

(The answer was read.)

Q. (By Mr. Sembower): Well, Mr. Brooks, is it not a fact that Dr. Robinson never had informed the members of your family that you had syphilis?

A. Yes, he had.

Q. Who had he informed?

A. Mr. Noel Edwards.

Q. Mr. Brooks, after you had the conversation with Dr. Robinson on Sunday morning, October the 8th, what did you do then?

A. Which conversation?

Q. Well, the first conversation. You called him back the second time; he called you the first time; isn't that correct?

A. He called me at about a quarter to 8:00.

Q. And then after that conversation, what did you do?

A. I went to church.

Q. Then what did you do after that? [1571]

A. Came home and had breakfast and called my family.

(Testimony of Thomas Richard Brooks.)

Q. And when you called your family together, at that occasion you informed them of the diagnoses, is that not correct?

A. I informed them that Mom and I had had blood tests taken and what we had been informed was in them.

Q. Who all was present there, Mr. Brooks?

A. There was my eldest daughter and her husband—

Q. Who is that?

A. That was William Emerson at the time.

Q. And her husband, and who else?

A. My daughter Enid, my daughter Joyce and her husband, Noel Edwards, my youngest daughter Audrey, my wife. That's all.

Q. Mr. Brooks, reading from the transcript of the hearing before the Board of Trustees of the Walla Walla Valley Medical Society to investigate a complaint of Mr. Thomas R. Brooks against Dr. Miles H. Robinson, dated November 21, 1950, at 8 p.m., I find here on Page 29, line 24—I beg your pardon—Page 28—a statement of Dr. Robinson. He says:

“In the first place, it is perfectly true that I made a number of phone calls to members of the family. I went to the Edwards to talk to her about the letter. As to the exact [1572] number of phone calls and the exact time they were made, I think I called Mr. Brooks twice and he called me once. I remember calling Mr. Edwards once and stopping by his place of business once that I know of. As far as this

(Testimony of Thomas Richard Brooks.)

statement that I made any threats, I deny that absolutely. Mr. Brooks has stated, he implied I talked about nothing but this letter. I talked about the fact that I was going to have to give up his case.

“That is the primary reason that I made the telephone calls and caused me to give up the case, and because of giving up their case, I would have to do certain things, report it to the Department of Health and report it to Mr. and Mrs. Brooks and the other members of the family.

“I never told Mr. Edwards over the phone, or any other time, that his father-in-law or mother-in-law had syphilis, but I did say there is a ‘disease’—I think I used the word ‘virus’—in your father-in-law and mother-in-law which is serious and has a serious consequence to them, because your father-in-law was not taking treatment and [1573] it might be their children might have it.”

And Mr. Edwards said:

“I will concede to that statement of Dr. Robinson.”

And then you said:

“What was that?”

And then Mr. Edwards said:

“I said I would concede to the statement of Dr. Robinson that he did not use the word ‘syphilis.’ ”

Now, you were in attendance at that meeting, were you not? A. I was.

Q. And you heard these statements made, did you not? A. I did.

(Testimony of Thomas Richard Brooks.)

Q. And you made that statement there?

A. Read on, please.

Q. Well, let me read this to you——

A. I would like the continuance of that because that is the text of the thing to get the true context.

Q. I don't have any objection to reading to you in just a moment. I would like to ask you this question:

This is the transcript of the hearing before the Grievance Committee of the Washington State Medical [1574] Association in the Marcus Whitman Hotel, April the 22nd, 1951, at the hour of 10 a.m. The transcript of your testimony is:

“Q. Did Dr. Robinson give you any treatment?”

You said: “No, sir; none whatever.

“Q. At any time? A. No.

“Q. Answer the question, did he inform your son-in-law and daughter of your disease?

“A. Yes. On the Monday morning, October 10th, he called by telephone my son-in-law Mr. Noel Edwards and told him his father and mother-in-law had got this disease.

“Q. Did he name the disease?

“A. I was under the impression that he did name it, but at the hearing my son-in-law conceded that it was virus, that he didn't use that word on my son-in-law's statement to the trustee on December 11th. I was under the impression that that word was used. That is why the statement is in the complaint. Dr. Robinson, during this telephone conver-

(Testimony of Thomas Richard Brooks.)

sation with my son-in-law requested my son-in-law and daughter to go that day to his office [1575] for blood tests."

Now, did you not give that statement?

A. That statement is perhaps correct, but I have never seen that deposition.

Q. Well, let me show it to you so that you may read it.

(Transcript handed to witness.)

A. I would like to read it all through, if you don't mind.

Q. No objection at all.

A. Where does it start? The page, that is what I want.

Mr. Sembower: Your Honor, I have a number of questions of the witness and it occurs to me if he would like to read this, I have no objection at all.

The Court: Well, I will adjourn, then, until tomorrow morning at 10 o'clock.

(Whereupon, the trial in the instant cause was adjourned until 10 o'clock a.m., Tuesday, March 27, 1956.) [1576]

THOMAS RICHARD BROOKS

a defendant herein, having previously been duly sworn, resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Sembower:

Q. Mr. Brooks, there were one or two things in the testimony yesterday which I want to make a little more definite.

I would like to ask you what the exact dates were of the various employments that you referred to yesterday that you had had. Would you tell us for whom you worked dating back to 1948?

A. June the 6th, 1948, I worked for White & Mask, contractors, as a bookkeeper at the McNary Dam in the relocation of the S. P. & S. Railway.

Q. That was your first employment since you arrived here in [1579] this area? A. No, sir.

Q. What was your employment before that?

A. I was a salesman at Monky Ward's.

Q. And during what period were you a salesman at Montgomery Ward?

A. September 15, 1947, to March the 31st, 1948.

Q. And did you have any employment prior to that in this area? A. No, sir.

Q. Well, then, after you had worked for the contractor—what was the last date of that?

A. That was November the 30th, St. Andrew's Day.

Q. 19——? A. '48.

(Testimony of Thomas Richard Brooks.)

Q. 1948. And then what employment did you have?

A. I was employed as a salesman by the General Appliance Company, 10 East Alder.

Q. General Appliance at 10 East Alder?

A. Yes.

Q. And how long did you hold that position?

A. Until May the 25th, 1949.

Q. And what kind of appliances were being sold?

A. All domestic.

Q. All right, and then what was the next job that you held? [1580]

A. I went to A. M. Jenson's.

Q. And how long were you at Jenson's?

A. From June the 5th, 1949, to December the 1st, 1950.

Q. And then what was the next job that you held?

A. I was employed by the Electric Home Service.

Q. I'm sorry, I didn't get that.

A. I was employed by the Electric Home Service.

Q. And how long were you employed by the Electric Home Service?

A. Until I was injured.

Q. And when was that? A. In May, 1951.

Q. And then were you inactive for a spell?

A. I was.

Q. What was the injury that you had?

A. I was knocked down crossing a pedestrian crossing at Second and Poplar, at 6:15 p.m., on May the 15th, 1951.

(Testimony of Thomas Richard Brooks.)

Q. Did a lawsuit arise out of that accident?

A. It did.

Q. Were you represented by any of the attorneys active in this cause? A. None whatever.

Q. Well, then, when did you get back into active work?

A. I started work December the 1st, 1951.

Q. And where was that? [1581]

A. At Bendix Electric & Music Shop.

Q. As a salesman? A. As a salesman.

Q. Selling appliances? A. Yes, and pianos.

Q. And then after that?

A. I resigned from that on September the 22nd to open my service station.

Q. Well, now, when did you work as an investigator for the insurance company?

A. I done it all the time, even right through and up to now.

Q. That is, from 1947 to the present?

A. About 1948 to now.

Q. 1948 to now, you have worked as an investigator for the insurance company?

A. That's right.

Q. Have you been active in the Red Cross, Mr. Brooks?

A. I was active until three years ago in it, yes.

Q. When was that?

A. Oh, I couldn't give you the exact dates, but it was somewhere in the region of '50, '51 and '52.

Q. And what activities did you have in connection with the Red Cross?

(Testimony of Thomas Richard Brooks.)

A. I was in charge of radio publicity and many other jobs. [1582]

Q. And did you speak on the radio in connection with that?

A. I spoke several times on the radio, mostly every week.

Q. Now, you mentioned that there were various clubs that you joined. I would like for you to tell me the approximate times when you joined those clubs.

When did you first belong to the Chamber of Commerce? A. 1949, February 1949.

Q. And the Lions Club?

A. December, 1950. [1583]

* * *

Q. Now, I was confused about the sequence of dates in connection with Dr. Smeltzer's spinal test of your wife with relationship to the time when she fell. Was that spinal test taken before or after she fell?

A. She fell in the early days, around the 3rd or 4th, of January, 1948, and it was about May, 1948, that it became apparent that she had suffered some injury. And in June when I move to McNary and we went down there, which is Umatilla, and it was while there that we got a distinct notice that she had a drop foot. She hit her foot like that (indicating) as she went along and we wondered why. And so she came in and saw Dr. Platner—I think was right—who took X-rays.

(Testimony of Thomas Richard Brooks.)

Q. And what did he discover, if you know?

A. And then I don't know exactly how she came to go to Dr. Smeltzer, but when she came back from one visit to [1584] Walla Walla, she informed me she had to go up to St. Mary's to have a spinal blood test taken on a certain day and I arranged accordingly and brought her up, and it was to be taken the next day and I stayed overnight in Walla Walla, and it was at that time that I met Dr. Smeltzer only.

Q. Now, Mr. Brooks, you testified yesterday that the stuff that the child swallowed, the reason the stuff that the child swallowed was sitting around, was that you were moving that day, is that correct?

A. I understand that is when it took place.

Q. That is, you were moving that day?

A. We were moving at that time, yes.

Q. Did you pack other drugs or pills or anything else in an Ex-Lax box?

A. Did I pack it, did you mean?

Q. Yes? A. I did not.

Q. Did you ever keep any other drugs in an Ex-Lax box?

A. We had lots of drugs in the medicine chest.

Q. Now, Mrs. Lepiane I think was staying with the child that day, was she not?

A. She was. She had the child under her care that day.

Q. And they were at your house?

A. They were at my house. [1585]

Q. Now, did Mrs. Lepiane at that time live in that house? A. No.

(Testimony of Thomas Richard Brooks.)

Q. Did she spend a large amount of her time in the house, in that particular house, your house?

A. Well, all my daughters come and visited their mother very, very regularly, never a day went by. As to how long they stayed there, I don't know.

Q. What I am interested in is whether she was around there long enough to be thoroughly familiar with the surroundings, like the medicine closet and so on, or whether she came in only occasionally?

A. She was there every day and I think she was fully cognizant of where everything was.

Q. On page 54 of the transcript of the hearing held by the state grievance committee, your daughter, Mrs. Edwards, testified to this effect, or I am reading a quotation from it:

"My mother was shifting houses and had packed different goods in boxes, and this youngster here, not quite two, got into the box of Ex-Lax and she had both boxes and noticed it in her mouth and called Dr. Robinson."

Do you remember hearing any account of this from Mrs. Edwards along that line?

A. I have heard something of that, but I couldn't give you [1586] as concise as you have read it.

Q. Now, she mentioned "both boxes" here. Did you know there were two boxes?

A. We had three boxes at the time.

Q. Also, you testified yesterday that you couldn't recall whether you talked with Dr. Brooks about your complaint against Dr. Robinson, is that correct?

A. That is correct.

(Testimony of Thomas Richard Brooks.)

Q. I want to ask you——

A. Except in a general way.

Q. I wanted to ask you if this refreshed your recollection: On page 187 of Dr. Peter Brooks' deposition in the state case, prior to this one, he said, I am quoting Dr. Brooks:

“He said that he had a complaint to make against you, Dr. Robinson, and he wanted my opinion as to whether he should file a personal lawsuit, which he did not wish to do, because he had a complaint, or whether he should go to the local medical society.”

And the question was:

“And what did you advise him?”

And the answer was:

“I advised him that I would suggest to him that he go before the local medical society.” [1587]

Does that refresh your recollection as to the conversation?

A. The way that Peter has put it is possibly in itself, correct, but as I remember it, the conversation that I had with Dr. Peter Brooks at that time was on the lines I was greatly concerned that twenty four hours or so before, I had been threatened by a member of the medical profession to divulge certain knowledge that he had obtained professionally by his attendance on my wife and myself to other people.

Q. And did you say that you planned a lawsuit?

A. And I was faced with the making of a very big decision.

(Testimony of Thomas Richard Brooks.)

Q. What was your decision, to sue or to go to the medical society?

A. I had to consider whether I would take one of two decisions; one, I could either go to the legal profession and throw this thing right into the open and possibly have far-reaching effects, or I could take a more stable, more quieter way of bringing it to the notice of the responsible officers of the medical society.

Q. And he suggested that you go to the medical society?

A. And he said he would prefer, he would suggest that I go to the doctors.

Q. Now, as a matter of fact——

A. That is all that was said. [1588]

Q. Now, as a matter of fact, Mr. Brooks, you had already made your decision, hadn't you?

A. I made my—I had almost made my decision.

Q. That is, you had called Mr. Fullerton earlier that day, had you not? A. I had, yes.

Q. So that at the time that you talked to Dr. Brooks, you had already decided on your course of action?

A. I wanted to know—the thing was that I wanted to talk with somebody and there was nobody than a doctor.

Q. Did you tell him at that time that you had already talked to Mr. Fullerton?

A. I told him I had requested Mr. Fullerton to arrange a meeting with the doctors.

Q. Now, also, Dr. Brooks in that deposition said

(Testimony of Thomas Richard Brooks.)

that he thought that he saw you in the afternoon. You testified that you had seen him, you thought, in the morning.

A. Well, that is my recollection.

Q. What is your recollection?

A. I am almost positive that I saw him at 10:30 on the 9th of October, 1950.

Q. Dr. Brooks said he usually operated in the morning.

A. Well, I can't question that.

Q. Now, Mr. Brooks, the swallowing incident involving your granddaughter happened on June the 9th, I believe, and [1589] your daughter filed her complaint August the 29th. Now, meanwhile, had you not become extremely exasperated with Dr. Robinson and didn't you in fact coach your daughter to file that complaint?

A. Absolutely no.

Q. All right, now——

The Court: Let's see, that is a double question. Which is the "absolutely no"?

Mr. Sembower: Yes.

The Court: You have got two elements there in your question.

Mr. Sembower: Yes.

Q. First, I will ask you, didn't you during that interval between June the 9th and August the 29th, become extremely exasperated with Dr. Robinson?

A. No.

Q. All right, and then I will ask you the second part of it, didn't you in fact coach your daughter to file that complaint?

A. No.

Q. Did you know that your daughter telephoned

(Testimony of Thomas Richard Brooks.)

Mr. Fullerton first and he said that her complaint on that dollar and a half bill wasn't warranted?

A. I didn't know a thing about it.

Q. Isn't the real reason, Mr. Brooks, that you got in touch [1590] with Mr. Fullerton to complain is the fact that you generally resented Dr. Robinson's conduct of your wife's case? A. No.

Q. Now, weren't you told, Mr. Brooks, that the substance which your granddaughter swallowed was poison, and didn't you tell the hearing conducted by the society that it was poison, and then at a later time changed that to Ex-Lax?

A. I never changed it at all. I said it was Ex-Lax at first, as I had been informed, and it is Ex-Lax right to this day.

Q. And you made no change?

A. No change.

Q. To that effect?

A. Other than refer that it was serious and could be a poison.

Q. At any time, you made no change?

A. Yes, it was Ex-Lax all the time.

Q. That is, you were told it was Ex-Lax?

A. I was told about it. I know it was Ex-Lax.

Q. Did you tell the men at the hearing that Dr. Robinson said he would give you until noon the next day, that is, August the 8th, to secure the letter?

A. August the 8th? You are rather—— [1591]

Q. Well, now, didn't——

A. I had no conversation with anybody about August the 8th.

(Testimony of Thomas Richard Brooks.)

Q. I beg your pardon, I have it October the 8th.

The Court: Pardon me, if you are trying to impeach him here, I wonder if you shouldn't give him the time and place and give him an opportunity to see whether he said so and so?

Mr. Sembower: I just read my notes incorrectly.

The Court: Yes.

Q. (By Mr. Sembower): Didn't you tell the men at the hearing that Dr. Robinson said that he would give you until noon the next day, that is, October the 8th, to secure the letter?

A. Which hearing?

Q. That was the hearing of the local society?

A. What date?

Q. The hearing which was held by the extraordinary group that convened on October the 12th, I think——

Mr. McNichols: The 11th.

Mr. Sembower: The 11th.

A. You are referring to the original complaint as made by me?

Q. That's right; yes.

A. I did tell them that, yes.

Q. Isn't it a fact that it was you who told the woman at [1592] your house, Mrs. Lepiane, or whoever it was that afternoon who was staying with the child, to telephone Dr. Robinson?

A. Would you repeat that, please?

Q. Wasn't it in fact you who told whoever it was staying with the child to telephone Dr. Robinson for advice in that situation?

(Testimony of Thomas Richard Brooks.)

A. How could I? I wasn't there.

Q. Did she get in touch with you and tell you that there was a crisis there? A. No.

Q. Well, all right. Now, didn't you in fact tell the men at that hearing on October the 11th that the child drank the poison, rather than ate it?

A. I never did.

Q. Never did. And you didn't later change your story on that?

A. I never changed my story at any time.

Q. All right, now, Mr. Brooks, when you telephoned Dr. Robinson back, the second call on Sunday morning, October the 8th, who answered the telephone, if you recall? A. Dr. Robinson.

Q. It was his voice that came on the wire when you called? A. It was. [1593]

Q. Now, that is, you have a clear recollection? You couldn't have been so excited that you didn't notice who answered, could you?

A. I only spoke to one person at the other end of the phone and that was Dr. Robinson.

Q. Now did you have an opportunity last night, Mr. Brooks, to carefully go over the transcript which I gave you yesterday?

A. I went over it this morning.

Q. Now, you testified that Dr. Robinson did tell your son-in-law, Noel Edwards, that you had syphilis, and I showed you Mr. Edwards' statements that he did not, to the effect that he did not so state, those statements being made by Mr. Edwards at the meeting of the trustees of the local society, Novem-

(Testimony of Thomas Richard Brooks.)

ber the 21st, 1950, and again at the April 22nd, 1951, meeting of the state grievance committee and your acknowledgment at that latter meeting of the fact that Mr. Edwards had said that.

Now, you have examined that transcript, do you now wish to change your testimony?

A. Why should I change my testimony?

Q. Your testimony today is the same as it was on that occasion, as it is reported in the transcript?

A. You are rather confusing the issue of the question to me.

Q. I am just asking you whether you want to change your [1594] testimony?

A. You have got it too involved, sir. I can't answer it.

Q. Well, now, you don't question that Mr. Edwards made that concession at the November meeting, do you? A. What concession?

Q. Well, he said: "I concede that Dr. Robinson did not use the word 'syphilis'" according to the transcript? A. He said, "I will concede."

Q. Oh, you think there is a significance to the word "will"? A. I do.

Q. Well, now, with respect to this, you were acting entirely on what Edwards told you, weren't you?

A. That's all I could go on, as to his conversation with Dr. Robinson. I was not present.

Q. So that is what you were going on?

A. I only know what my son-in-law told me and he told me that the Doctor did use the word and then he withdrew it and acceded that he didn't, that

(Testimony of Thomas Richard Brooks.)

he used the word "virus." I had no control on what he said or thought.

Q. All right. Now, Mr. Brooks, did you enter into some kind of an agreement with the doctors at that meeting where your statement was taken that you would not file suit against Dr. Robinson?

A. I said this, and I think you will find it in the statement of October 11th, that I would do nothing until "You [1595] gentlemen have considered this complaint," or words to that effect.

Q. Had you given any commitment earlier than that meeting to Mr. Fullerton that you would not file suit?

A. I may have done it in conversation, but it had been definitely on the same lines.

Q. I am reading from Dr. Tompkins' transcript, the transcript of his deposition, and the Doctor was asked this question:

"Q. What was the nature of that conversation between you and Mr. Fullerton?"

This was conversation which took place prior to the meeting which was held at which you gave your statement. He answered:

"A. Mr. Fullerton was the one who had contacted Mr. Brooks after he had given his complaint, and also he is the one who contacted Mr. Brooks regarding the scheduling of the hearing. Mr. Fullerton told me that Mr. Brooks was contemplating a suit and I passed the word to Mr. Fullerton to just tell Mr. Brooks to sit tight, don't try to push things too fast. This was the only discussion, it went

(Testimony of Thomas Richard Brooks.)

through Mr. Fullerton. Whether he passed that word on, I don't know.

"Q. Did you arrange for a promise from Mr. Brooks through Mr. Fullerton that he would [1596] not take any action without your permission?

"A. I asked that and I received word back that it had been given.

"Q. So it was your opinion that no suit would be commenced without your consent?

"A. Correct."

Now, does that refresh your recollection concerning any conversations you had with Mr. Fullerton?

A. My recollection is the same.

Q. The same as this statement?

A. That I did not give any doctor any direct promise at the doctor's request or from the doctors. At no time did I ever receive a request from the medical society or the doctors individually or collectively, a request to take no legal action. The subject was never discussed.

The Court: Pardon me, what is it you were reading from? Is that a statement?

Mr. Sembower: Reading from the transcript of Dr. Tompkins' deposition.

The Court: Isn't that a rather unorthodox method of examining here? If you want to impeach him, you can bring his deposition to his attention as to what he has said, but how in the world would he be bound by what Dr. Tompkins testified about what Mr. Fullerton told him about what Mr. Brooks had

(Testimony of Thomas Richard Brooks.)

told Mr. Fullerton? Isn't that what you are [1597] getting at here?

Mr. Sembower: No, what I wanted to do was I wanted to ask him, in the light of this, he recalled any conversations at all with Mr. Fullerton which would give rise to a report of this kind.

The Court: And in order to do that, you are taking testimony of some other doctor or some other person who testified as to what Fullerton had told him that Mr. Brooks had told Fullerton. I think that is going a long way around the bush in trying to impeach a witness.

Mr. Sembower: I will withdraw that question.

The Court: Well, he has already answered it, go ahead, but I questioned your method here. I think that you are trying to impeach him aren't you?

Mr. Sembower: Yes, but I didn't want him to feel, your Honor, that I was just pulling something out of the air. I had this statement here.

The Court: Well, I don't think it is proper to confront him with all of these statements, particularly hearsay statements that have been made by other witnesses, and then try to make him responsible for them. The method of impeachment is to bring out what he has testified is inconsistent with what he has testified today, I should think.

Q. (By Mr. Sembower): I believe your testimony, Mr. Brooks, is that you did not have any conversation with Mr. [1598] Fullerton relative to whether you were going to sue or not, is that correct?

(Testimony of Thomas Richard Brooks.)

A. I had no direct conversation. I may have just said that I, as I did to Dr. Brooks, I said that I had to take a decision of one of two courses, and having gone to the doctors, I wouldn't immediately run to the lawyer. I had no desire to play both ends against the middle.

Q. Now, Mr. Brooks, who arranged for you to attend the first meeting, that is, the meeting at which your statement was taken? Did anyone get in touch with you other than Mr. Fullerton, which you testified to yesterday?

A. I have nothing to add to that testimony.

Q. Now, who, if you recall, arranged for you to attend the November 21st hearing?

A. I received a letter signed by Mr. Fullerton.

Q. Did anyone else get in touch with you in connection with that meeting?

A. Not that I have any recollection of.

Q. In a deposition given in the state suit, the question to you was——

The Court: When and where, Mr. Sembower?

Mr. Sembower: I beg your pardon?

The Court: Shouldn't he know when and where?

Mr. Sembower: Yes. Pages 22 and 23 of the deposition taken in March, 1953, I believe it was at the Marcus Whitman [1599] Hotel.

Mr. Kimball: It wasn't there, it was at the court house.

Mr. Sembower: Oh, was it at the court house?

The Court: If he remembers it, it is all right, it doesn't make any difference particularly.

(Testimony of Thomas Richard Brooks.)

Do you remember the deposition, Mr. Brooks?

A. I remember giving a deposition, your Honor.

The Court: Yes, all right.

A. In the court house.

Q. (By Mr. Sembower): The question was:

“Q. You told them your story of your own free will and accord”?

And at that time it appears in the transcript that you answered, “Yes.”

And then the question was:

“Q. Then later, you attended a meeting of another group and told your story to them of your own free will and accord?”

And the transcript then says:

“A. No. I was summoned to attend that, but I had agreed that I would be available at any time.”

And then the question was:

“Q. Well, you went there freely and voluntarily?” [1600]

And you said:

“A. Yes, I raised no objection.”

Now, I wanted to ask if you recall with whom you had an agreement to participate in further proceedings? A. Other than——

Mr. Kimball: The witness has not testified he had any such agreement.

The Court: I didn't hear any testimony of an agreement there.

Mr. Sembower: He says he agreed to attend.

The Court: He said he attended voluntarily.

Mr. Sembower: He said: “I was summoned to

(Testimony of Thomas Richard Brooks.)

attend that but I had agreed that I would be available at any time."

A. In my complaint made to the doctors on October the 11th, 1950, I assured them at the conclusion that I would be available at any time for any further information that they may desire, and I took this to be part of the obligation I had entered into when making the complaint, to make myself available if they required me, because I had made the complaint and I should be prepared, I considered, to be available.

Q. Then there was the hearing of the state grievance committee, which was held on April the 22nd, 1951. You attended that. Who arranged with you to attend that meeting? [1601]

A. I had a notice of it.

Q. And you attended pursuant to that notice?

A. I did.

Q. Did anybody talk to you prior to that meeting?

A. Who do you mean by anybody?

Q. Well, I mean anybody.

A. I told my children about it.

Q. Well, I mean contacted you?

A. Nobody contacted me other than what I remember in that letter.

Q. Now—— A. "Anybody" is a big word.

Q. Now, I show you Plaintiff's Exhibit 103, which has been admitted, letter from James H. Berge to Mr. Thomas R. Brooks and ask you if you received that letter, if you recall?

A. What is the date?

(Testimony of Thomas Richard Brooks.)

Q. The original of that?

A. I believe I did because it is addressed to me. I remember getting some communication.

Q. It says that an enclosure was sent along with the decision of the Washington State Grievance Committee.

A. I may have received all the papers. All the papers I have are in the hands of my attorney.

Q. But you do, to the best of your recollection, remember [1602] that you did receive the decision?

A. I remember receiving a communication and I have no reason to doubt it was that.

Q. Do you remember when you received it? The date on this letter is May the 7th.

A. Well, I take it I received it in the course of mail.

Q. And now the hearing, the expulsion hearing, so-called, occurred on May the 22nd, 1951. Did you attend that? A. I did not.

Q. Were you not present there at all?

A. I was not there at all in the meeting.

Q. But were you then near the meeting?

A. I went to the hospital to see a friend who was sick and I went downstairs into the basement and visited with my son-in-law and Mr. Fullerton in the basement at the same time as Dr. Robinson was sitting at the other end of the basement outside the meeting.

Q. Is it your testimony, then, that that was just merely a coincidence? A. Well, it could be.

Q. Just a happenstance that you were there?

(Testimony of Thomas Richard Brooks.)

A. It just happened, yes.

Q. Had anyone notified you before that meeting of May the 22nd that it was going to take place?

A. I did not have any information. I didn't even know it [1603] was on, except that I knew my son-in-law had to go, had been invited to go, and I just went down there curious.

Mr. Sembower: That is all, your Honor.

Cross-Examination

By Mr. Kimball:

Q. Mr. Brook, I hand you what has been marked as Plaintiff's Exhibit 18. I think you saw it yesterday and referred to it as the Brooks complaint?

A. Yes, sir.

Q. Did you make the statement that is therein contained to the doctors that were gathered and shown present on October the 11th, 1950?

A. Yes, sir.

Q. Did you sign that when it was transcribed?

A. Yes, sir.

Q. That is your signature at the end?

A. That is my signature.

Q. You testified yesterday you had made some small corrections in the body of it. I ask you now, Mr. Brooks, if in addition when it was presented to you for signature, did you add the letter that appears in the back cover? A. I did.

Q. How did you happen to do that? [1604]

A. I received this letter from Dr. Robinson dated October the 10th, received by me per regis-

(Testimony of Thomas Richard Brooks.)

tered mail on October the 12th, the day following my making of the complaint before the doctors, and I felt that it was a pertinent document which should be in the possession of the society, having received my complaint as they had the day before, and it was with that intention that it should be added to it as an addendum to my complaint that I passed it on to the society, and this is a true copy.

Q. And the statements you made, as shown therein, were believed by you and were true at the time you made them?

A. They are still true, sir.

The Court: When you get through with it, I just want to see that letter attached, but you go ahead and finish with it.

Q. (By Mr. Kimball): Mr. Brooks, I ask that you read from Exhibit 18, starting with line 9 on page three, and go down through the last paragraph on page four.

A. (Reading):

“On receiving this copy of the letter, Dr. Robinson called at my daughter’s address on Thursday, October 5th, and asked to see the original letter, but they had not, as then, received it. He called again on the Friday evening and requested that my son-in-law see him, [1605] but he was out. However, on Saturday morning, he went to my son-in-law’s work and demanded he be given the letter. He had gotten the letter then. My son-in-law said he would think it over and see Dr. Robinson on Monday, October 9th.

“On Saturday night, I got a telephone call from Dr. Robinson. He insisted that I get the letter from

(Testimony of Thomas Richard Brooks.)

my daughter and son-in-law and hand it over to him.”

The Court: Just a moment here now. I questioned Mr. Sembower’s method, I question yours. This is hearsay, even though he reads it from the statement. I don’t know what the purpose is, but I am not going to consider it as testimony as long as it is hearsay.

Mr. Kimball: I am not introducing it for that purpose. It is a statement that he made to the doctors and, as such, would certify to the doctors it was part of his complaint.

The Court: If you want to call my attention to the document, you need not have him read it. It is before me, it is in evidence.

Mr. Kimball: I concede to your Honor’s ruling, but from here on I think it takes a different tone. He is testifying to things that he knows.

The Court: Well, all right. Even though he reads it [1606] from a statement, it is still hearsay and I will regard it as such.

Mr. McNichols: Is he testifying, or is he reading a statement?

Mr. Kimball: He is reading an exhibit now.

The Court: He may look at that to refresh his memory, but if he is going to testify, he should testify.

Go ahead.

The Witness: Continue to read, sir?

The Court: Yes, all right, go ahead.

(Testimony of Thomas Richard Brooks.)

A. I think the last place I read was "son-in-law and hand it over to him." (Reading continued):

"I said, 'I have nothing to do with it. I haven't any details of the complaint. It has nothing to do with me.' He said, as head of the household of the family, I should tell my daughter and son-in-law I had to get the letter and give it to him. I had an engagement and I told him, 'I am in a hurry. I wasn't interested in the darn thing. That is all, Doctor. Good night.'

"I saw my son-in-law that evening and I requested that I be given the opportunity to see the letter, as I didn't know anything about its contents at that time. On reading it, I [1607] couldn't see anything to the letter. It was, in my view, a very well phrased letter.

"Well, at ten minutes to eight on the Sunday morning my telephone rang and it was Dr. Robinson. This is the conversation. I answered the telephone, 'Hello.' He said, 'This is Dr. Robinson.' I replied, 'This is Mr. Brooks.' He immediately said, 'Well, Mr. Brooks, I have decided if you don't have your daughter give me that letter, I will have to report you and your wife to the medical authorities. If you hand the letter over, I won't do anything.' I replied, 'Doctor, that is a threat.' He replied, 'No, it isn't.' I said, 'It is a threat because you have said to me, Dr. Robinson, if I do A, you won't do B, but if I don't do A, you will do B. I am awfully surprised at your action. I cannot understand it. I didn't want to get in this argument and now you

(Testimony of Thomas Richard Brooks.)

have me in over my head because I happen to be one of the unfortunate ones to have something in my blood that you state you should have notified authorities about. Why haven't you notified them before? I am not going to let you have the letter now.'

"He then threatened to tell my son-in-law [1608] and daughter and my other son-in-law and daughter. I said, 'If you do, Doctor, you will have me taking the view that you are a cantankerous type and a disgrace to your profession.' He then said he would give me until noon that day, Sunday, to get the letter to him."

Mr. Sembower: Your Honor, for the record, I would like to make an objection to that as hearsay. Though the Court has already ruled, I think I should make an objection for the record.

Mr. Kimball: I want it perfectly clear as to what our position is. We are not arguing at this time the truth or falsity of it, we are arguing that the complaint was made as set forth here to the doctors.

The Court: Well, it will be received. I understand that counsel's purpose now is to show that this statement was made to the doctors and it will be accepted as evidence of that. It isn't accepted as testimony of this witness as to what was said over the telephone.

Mr. Sembower: Thank you.

The Court: Because he isn't testifying.

Mr. Sembower: I won't object to it if it is what he has said.

(Testimony of Thomas Richard Brooks.)

Q. (By Mr. Kimball): Then I will ask you, did you make the statement contained herein to the group before you at [1609] that time?

A. I did.

Q. And were the statements therein true?

A. They were true.

Q. And, Mr. Brooks, at the hearing before the doctor group on November the 21, 1950, did you repeat the same statement, in substance?

A. I did.

Q. And is it substantially shown by the transcript of that hearing? A. It is.

Q. At the time you appeared before the group on October the 11th, 1950, Mr. Brooks, had you been solicited by any person to make that statement?

A. None whatsoever.

Q. Had you ever been employed by me prior to that time? A. No.

Q. Had I ever done any work for you professionally? A. No, sir.

Q. Were we acquainted?

A. We were not acquainted.

Q. Between the dates of October the 11th, 1950, and November the 21st, 1950, were you contacted by me regarding the statement that you had made?

A. No, sir. [1610]

* * *

RALPH W. STEVENS

a defendant herein, called as an adverse witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. McNichols:

Q. Would you state your full name, please, Dr. Stevens? A. Ralph W. Stevens.

Q. And what is your present home address?

A. Abbott Road, Walla Walla.

Q. You are a practicing physician in Walla Walla, are you? A. Yes, sir.

Q. And where is your office located, Doctor?

A. At 308 Baker Building.

Q. Are you a specialist or a general practitioner? A. I am a specialist.

Q. And what is your specialty?

A. I am an opthalomologist and otologist. It means eye, ear, nose and throat.

Q. Have you been located at that office address for a number of years? A. Yes, sir.

Q. Were you located there during the years 1950 and '51? A. Yes, sir. [1614]

Q. You are a member of the Walla Walla Valley Medical Society, are you, Doctor? A. Yes.

Q. Have you been at all times since you have been practicing in Walla Walla? A. Yes.

Q. Are you also a member of the organization you refer to as the bureau? A. Yes.

Q. Incidentally, you have been present in court all during these proceedings, haven't you?

(Testimony of Ralph W. Stevens.)

A. Yes, sir.

Q. So if we refer sometimes to short names and such, you are familiar with the testimony to date?

A. Yes, sir.

Q. You are a defendant in this action?

A. Yes, sir.

Q. And you are, are you, acquainted with the plaintiff, Dr. Miles Robinson? A. Yes.

Q. Approximately when did you first make his acquaintance? A. I think sometime in 1948.

Q. Shortly after his arrival in Walla Walla?

A. Yes.

Q. What offices have you held, Dr. Stevens, in the local [1615] society, the Walla Walla society, if any?

A. I think I have been a member of the board of trustees, I was secretary of the society two years before the war, and I was chairman of the grievance committee in 1950-52.

Q. What offices, if any, Dr. Stevens, have you held or do you now hold in the bureau, the Medical Service Bureau?

A. I was president of the Walla Walla Valley Medical Service Corporation in 1948.

Q. During the calendar year 1948?

A. Yes.

Q. Have you ever held any offices in the state medical association? A. No.

Q. Or in the American Medical Association?

A. No.

Q. Do you recall, Dr. Stevens, when the question

(Testimony of Ralph W. Stevens.)

of the local grievance committee first came up in the society? A. Yes.

Q. Approximately when was that?

A. April 25th, 1950.

Q. Are you speaking now of the date of the meeting at which the motion was passed with respect to that committee? A. Yes.

Q. Had there been preliminary work done toward the organization of the grievance [1616] committee? A. No.

Q. Had you communicated prior to that time with any other medical organization regarding the grievance committee? A. No.

Q. You did, however, subsequently, I believe?

A. Yes.

Q. Who, Dr. Stevens, if you recall, made the motion to create the grievance committee?

A. I did.

Q. And it was acted upon at that meeting?

A. Yes.

Q. When were the members of the grievance committee appointed?

A. Sometime in the next month after that meeting.

Q. By whom? A. By Dr. Page.

Q. Did Dr. Page appoint you?

A. Yes, he told me that I was appointed and I was to act as chairman, and he told me who the other two members were.

Q. And who were the other two members?

A. Dr. Arthur Yengling and Dr. I. C. Bohlman,

(Testimony of Ralph W. Stevens.)

and he also told me that he had asked Dr. Lyman to sit in as an advisor if he was needed.

Q. Dr. Lyman was an older physician? [1617]

A. Yes.

The Court: Pardon me, who was the second one? Bowman? A. Bohlman.

The Court: What were the initials?

A. I. C., I believe.

The Court: All right.

Q. (By Mr. McNichols): Doctor Lyman wasn't actually a member of the committee?

A. No, sir.

Q. Do you know who informed the other members of their status on the committee?

A. I imagine the president did.

Q. It wasn't you, at any rate?

A. Dr. Page. No.

Q. Well, then, when did you proceed to operate as a committee, Doctor, as a grievance committee?

A. Well, as soon as Dr. Page had told me that I was to be chairman, which was toward the end of May, I contacted Mr. Fullerton, who was the executive secretary of our society, and asked him to write to our Washington State society and to the AMA and to any other societies that he knew of who had grievance committees to get all the information he could so that we could formulate some type of plan to operate one. [1618]

Q. This was in the spring or early summer of 1950? A. Yes.

(Testimony of Ralph W. Stevens.)

Q. And did Mr. Fullerton follow those instructions? A. Yes, he did.

Q. And you obtained certain memoranda and information on grievance committees, did you?

A. We received a small amount of material. We didn't receive as much as I would like to have gotten.

Q. Was this grievance committee program originally promulgated through the AMA?

A. Yes, sir, it was recommended by the board of trustees of the AMA in December, 1949.

Q. When we refer to the "AMA," we are referring to the American Medical Association?

A. Yes.

Q. Was it also promoted by the Washington State Medical Association, the grievance committee?

A. I believe so. An editorial came out in April, 1950, recommending it.

Q. Now, the membership of this grievance committee in Walla Walla was kept secret from the other members of the society, wasn't it?

A. Yes.

Q. In other words, the other members of the medical society had no knowledge of who was on the committee? [1619] A. That's right.

Q. In fact, as later turned out, one of the members didn't know he was on it, isn't that right?

A. Yes.

Q. And which one was that?

A. Well, I wouldn't say he didn't know. I think

(Testimony of Ralph W. Stevens.)

he was notified by Dr. Page he was on it, but he hadn't participated in any of our discussions.

Q. Well, let me put it this way, Doctor: Was there ever a meeting of the entire grievance committee? A. Not at that time.

Q. Was there at any time in 1950?

A. I believe there was some discussion with the three members regarding proposed rules and regulations of the grievance committee.

Q. That was subsequent to the time this controversy arose, though, wasn't it? A. Yes.

Q. Did you and any other member or members of the committee proceed to compile rules and regulations for the operation of the grievance committee? A. Yes.

Q. Who did you work with on that?

A. Dr. Yengling.

Q. Just Dr. Yengling, wasn't it? [1620]

A. Yes.

Q. And when did you start that preparation on the rules and regulations?

A. Well, I had received some of this information about grievance committees and I had discussed it with Dr. Yengling telling him that we were getting some material together and that we would probably publish an article in the paper soliciting any complaints the public might have, letting them know that we had a grievance committee, and formulating our plans as complaints came in.

Q. Well, now, all during the controversy here between the society and the grievance committee and

(Testimony of Ralph W. Stevens.)

Dr. Robinson, there were, in fact, no rules and regulations for the grievance committee, were there?

A. There was no adopted rules as far as the society was concerned. They were just tentative rules.

Q. By rules now, are you referring just to ideas of procedure that you and Dr. Yengling had discussed?

A. Yes.

Q. In other words, there weren't any printed rules of any kind?

A. No.

Q. And your procedure arose out of merely informal discussions between yourself and Dr. Yengling, didn't it?

A. Yes. [1621]

Q. You didn't discuss it with Dr. Bohlman or Dr. Lyman?

A. No.

Q. Or the trustees?

A. No.

Q. Or any officer of the society?

A. No.

Q. Or it was never again raised at a society meeting, was it, until sometime later?

A. Sometime later.

Q. As a matter of fact, the rules and regulations of the grievance committee of the society were not adopted until the meeting at which Dr. Robinson was expelled, isn't that right?

A. That was when they were officially adopted the second time, I believe.

Q. May 22nd, 1951?

A. Yes.

Q. And now, you refer that that was the second time; the first time—correct me if I am wrong—was on the 27th of March, 1951?

A. That's right.

Q. And those regulations were just re-enacted on the 22nd of May?

(Testimony of Ralph W. Stevens.)

A. Yes, after they had been approved by the Washington State board of trustees. [1622]

Q. But they weren't in effect in the society until after the 22nd of May, 1951, were they?

A. Those rules were not.

Q. Well, there weren't any rules other than your informal agreement with Dr. Yengling?

A. That's right.

The Court: Time for recess, court will recess for ten minutes.

(Whereupon a short recess was taken.)

Mr. McNichols: Mr. Oden, would you read the last question and answer, please?

(Whereupon, the last question and answer were read.)

Q. (By Mr. McNichols): Dr. Stevens, was there any activity on behalf of the local grievance committee during the summer of 1950 prior to August? A. No, sir.

Q. What was the first complaint you received as chairman of that committee?

A. I don't recall which was the first. I obtained three complaints within a day or two toward the end of August, 1950.

Q. Oh, three complaints? A. Yes.

Q. Was one of those the so-called Edwards complaint here against Dr. Robinson? [1623]

A. Yes, sir.

Q. Unless it becomes necessary, I see no point in mentioning the names of the other doctors.

(Testimony of Ralph W. Stevens.)

Did you proceed then to act in your capacity as chairman of the grievance committee on those three complaints?

A. Yes, I took the three complaints along with me and contacted Dr. Yengling and showed them to him. We were surprised because they all come in at once several months after we had published the notice in the paper, we thought at first there weren't going to be any complaints.

Q. Did you discuss it at all with Dr. Bohlman?

A. No.

Q. Or Dr. Lyman. Then with respect to the Edwards complaint, you communicated with Dr. Robinson, is that right? A. Pardon?

Q. You saw Dr. Robinson then about the Edwards complaint? A. Yes.

Q. Did you read that complaint at the time you got it carefully? A. Yes.

Q. Did you discuss it with Mr. Fullerton?

A. No. [1624]

Q. You were familiar with the actual wording of it? A. Yes.

Q. Then you had your discussion with Dr. Robinson on the street? A. Yes.

Q. Was that just accidentally running into him?

A. No, I planned to just meet him informally and talk to him about it, rather than take his time at his office or to call a meeting of the whole committee to talk to him about it.

Q. I mean, you didn't plan the specific meeting?

A. No, I just planned to see him, either at the

(Testimony of Ralph W. Stevens.)

hospital or on the street, wherever I would run into him.

Q. And then you discussed it with him on the street? A. Yes.

Q. You heard the testimony that he gave here about your discussion? A. Yes.

Q. And was that substantially what your conversation was with him?

A. Yes, that was included. There were a few other things that were mentioned that he didn't bring out.

Q. What was the conversation between you and Dr. Robinson, as you remember it?

A. Well, I stopped him and I said, "Dr. Robinson, I wonder [1625] if you could spare a few minutes to talk to me. We received a complaint from Mrs. Noel Edwards about a dollar and a half bill, and I am president—or chairman of the grievance committee."

Q. Did you show him at that time the complaint?

A. No, I didn't.

Q. Did you have it with you?

A. No, I didn't. And I explained to him that the complaint was over a matter of receiving a prescription; that this child had swallowed some posion or—I don't think—I think I said swallowed Ex-Lax from what was in the complaint, but swallowed something—"and they understood they were to receive a prescription and they didn't get it," and when they received a bill for a dollar and a half, they contacted his office telling them they hadn't re-

(Testimony of Ralph W. Stevens.)

ceived a prescription, and then they were told it was for a telephone call.

Q. Now, at that time, did you tell Dr. Robinson that you were on this grievance committee?

A. I told him I was chairman of the grievance committee.

Q. Did you tell him who the other members were? A. No.

Q. At that time, he would have no way of knowing unless you told him who was on the committee?

A. No. And then, do you want me to continue answering this [1626] question?

Q. Yes, just finish the conversation, Doctor.

A. I asked him if he remembered anything about it and he seemed a little surprised and he said, "Well, yes, I faintly recall something about a prescription. I had tried to contact the family several times and they had moved the child from one house to another and I wasn't able to reach them." But then he said, "I don't think you have any business asking me about this question. This is a matter between me and my patient."

And I said, "Well, we aren't trying to tell you what you should charge, but the society has set up a grievance committee to hear and receive complaints and settle disputes between patients and that is all I am attempting to do is to settle this amicably."

Q. Did you suggest to Dr. Robinson that possibly he should go and talk to the Edwards about it or arrange a discussion with them of some kind?

A. No, I didn't. I suggested to him that, since

(Testimony of Ralph W. Stevens.)

there was a misunderstanding over the prescription and it was a small amount, that the best thing would be just to forget about the bill and that was the time when he said: "Well, Ralph, you aren't so ethical yourself. You are making a profit from selling glasses."

And I was surprised that he would change the tenor [1627] of the meeting to attacking my ethics, and it was the first time anyone in the society had ever brought that up. The American Medical Association had changed the Principle of Ethics the year before and it was quite confusing and I was puzzled over them myself.

Q. Did that irk you somewhat?

A. Well, I was a little bit irked and I said: "Well, if I am unethical, the majority of other eye specialists who dispense their own glasses are unethical."

Q. Along that line, Dr. Stevens, subsequent to that time you were informed by the trustees that there were certain things in your practice that needed correction, weren't you? A. Yes.

Q. Did you make those corrections?

A. Yes, but I haven't finished answering this question.

Q. That is all right, I just wanted to keep the sequence. Go ahead.

A. I said: "Furthermore, there aren't any facilities available locally to dispense glasses unless we provide them ourselves." I said: "I think it is the same thing as if you were practicing in Dixie,"

(Testimony of Ralph W. Stevens.)

which is a small town near here, "and there was no drug store there and you had to dispense drugs and medicines, it would be perfectly ethical." And then he said, "Well, I don't [1628] want to argue with you about the case. I have got to run to the office now and I will see you later."

That was the end of the conversation.

Q. That was the last time you discussed it with Dr. Robinson until after the letter had been written, then?

A. No, I discussed it in the open meeting of September 26th, 1950, before the society.

Q. Oh, was that the discussion in general about the grievance committee that was held at that meeting?

A. Yes he brought up the fact that I had no right to talk to him about any of his business or his fees that he charged patients.

Q. Well, then, getting along with the story, Doctor, this is Plaintiff's Exhibit 14 I am showing you. It purports to bear your signature and is a letter concerning the Edwards complaint.

A. I recognize it.

Q. And you wrote that letter, did you?

A. Yes.

Q. Did you turn that over then to Mr. Fullerton?

A. Yes. I delivered it to him by hand.

Q. Approximately when? I notice that it is dated 9-27-50.

A. That is the date I wrote it.

Q. You delivered that in person to Mr. Fullerton?

A. Yes. [1629]

(Testimony of Ralph W. Stevens.)

Q. Well, now, in the first paragraph of that letter, Dr. Stevens, you state that the complaint regarding the treatment of Noeline Edwards, who was the child, was investigated by the grievance committee? A. Yes.

Q. Would you just tell briefly the extent of that investigation?

A. Well, I talked to Dr. Robinson about the case and it was essentially or substantially the same as the complaint in the letter, so I saw no reason to investigate it further.

Q. You never talked to anyone else about it that was involved in the actual dispute? A. No.

Q. You didn't talk to the mother of the child?

A. No.

Q. Did you talk to the woman who was the baby sitter? A. No.

Q. No one? A. No one.

Q. Did it strike you, Dr. Stevens, at the time that the complaint was actually made by Mrs. Edwards that it was entirely a second hand story?

A. Not necessarily.

Q. As it turned out, in fact, it was, [1630] wasn't it?

A. It was second-hand evidence; yes.

Q. In other words, Mrs. Edwards was stating in the complaint what someone else had said at some date?

A. Well, part of it was that second-hand evidence. The other evidence was that she had gone to the office and she had done that herself.

(Testimony of Ralph W. Stevens.)

Q. I don't believe you stated whether or not—maybe you did—you did discuss this with Dr. Yengling before writing the letter? A. Yes.

Q. Did he approve the writing of it?

A. Yes.

Q. And that was the extent of your meeting, wasn't it, your discussion with Dr. Yengling?

A. Well, I saw him the day following the medical society meeting September the 26th when Dr. Robinson brought up the matter before the society and was not supported, and we felt that in order to settle the whole matter, we would write this letter telling them or recommending them to drop it.

Q. Would you examine the actual complaint, Dr. Stevens, Plaintiff's Exhibit No. 10, just briefly? You may be familiar with it without examining it. Say so if you are.

A. Yes; I have seen this complaint. [1631]

Q. Well, the actual complaint itself, would that, in your opinion, establish any grounds for taking any action against the doctor of any kind, assuming everything in there is true?

A. No; it would not, I don't believe.

Q. And subsequently, before the state grievance committee, as I recall, the question of whether there was a meeting held by the grievance committee on this matter was raised. Any reference you have made to a meeting there, I assume, you would be referring only to your discussion with Dr. Yengling? A. That is right.

(Testimony of Ralph W. Stevens.)

Q. Where was that discussion held?

A. It was either at his home or at Dr. Brooks' home.

Q. Was it——

A. I think it was at Dr. Yengling's home.

Q. There was no appointment specifically for discussing this complaint, was there? A. No.

Q. You just happened to get together and the matter came up?

A. Well, I intended to see him about it.

Q. Did all of these three complaints come to you from Mr. Fullerton? A. Yes.

Q. He handed them over to you [1632] personally? A. Yes.

Q. Was there any record of any kind, Dr. Stevens, of the other two complaints?

A. I have not been able to find anything in the files of the medical society. I looked about two weeks ago.

Q. Did those complaints ever go beyond you as chairman of the grievance committee? A. No.

Q. They never went to the trustees?

A. No.

Q. And there is now, to the best of your knowledge, no record of those complaints?

A. Dr. Carlson, who had received a letter regarding one complaint concerning him, told me that he might have the copy of the letter filed away in some of his things in the attic. He is in the Army right now.

Q. Well, there have been efforts made during the

(Testimony of Ralph W. Stevens.)

pretrial and discovery proceedings in this case to locate them and they have never been located?

A. That is right.

Q. Dr. Stevens, during this period sometime, you went to Chicago, I believe? A. Yes.

Q. Do you remember approximately when you left Walla Walla for Chicago? [1633]

A. I left Walla Walla October the 5th and I returned October the 20th by train.

Q. When you first appointed Mr. Fullerton as secretary of the grievance committee, did you inform him of the membership of that committee?

A. I do not believe so.

Q. In other words, the only connection he would have had with the committee would have been through you? A. Yes.

Q. Is that clear in your mind?

A. I believe that is right. I believe that is right.

Q. How many complaints altogether did you function on when you were chairman of the grievance committee, do you remember?

A. Oh, there were three that have been mentioned and I think there were two or three others in the next year or two.

Q. To your knowledge, is there any record of any one of those complaints available?

A. I have not seen them.

Q. Without mentioning the names, Doctor there was one that you considered which was rather serious, was there not, a disciplinary matter that came up?

(Testimony of Ralph W. Stevens.)

A. I did not know of any complaints handled by myself as chairman of the grievance committee that were serious. [1634]

Q. When were you on the board of trustees, or were you? A. I think it was 1953.

Q. Was there a rather more serious complaint against a doctor at that time?

A. I do not believe so. I cannot recall.

Q. Perhaps I can refresh your memory. Wasn't there a complaint against a physician here from someone with respect to whether or not he had made false statements in his application forms to the society? A. That was 1948, I believe.

Q. Oh, that was prior to this incident?

A. Yes.

Q. In what capacity were you acting at that time?

A. I was on the board of trustees then.

Q. Did the board of trustees hold a hearing on that particular complaint? A. Yes.

Q. What was their finding, if you recall?

A. They found that a false application had been made by this doctor stating qualifications and education which he did not have.

Q. What did that amount to, the false statement? What was the false portion of it?

A. He stated that he had had three years of surgery at the Mayo Clinic, and we found that he had never been there. [1635]

Q. Where did that complaint end? What was the final disposition of it?

(Testimony of Ralph W. Stevens.)

A. The board of trustees could take no further action, on advice of counsel.

Q. To your knowledge, Dr. Stevens, in all the time that you have been practicing in Walla Walla, has there ever been a disciplinary action against a doctor, actual disciplinary action?

A. How would you define "disciplinary action"?

Q. Well, strike that question, Mr. Oden.

Has there even been a hearing held before the membership of the society with respect to discipline of any member?

A. Not that I remember of.

Q. Has there ever been a hearing, prior to the Robinson matter, before the board of trustees of the society?

A. Yes.

Q. Was that the incident you just described?

A. Well, that was one of them.

Q. What other ones were there?

A. The other one was a complaint against myself.

Q. When was that?

A. In the fall of 1941.

Q. What disposition was made of that?

Mr. Kimball: Your Honor, I wonder if this isn't a [1636] little remote to the subject matter?

Mr. McNichols: Your Honor, my purpose is not to embarrass anyone here or cause any difficulty; it is merely to show that any complaints that have arisen in the society here, there is virtually no record of any of them and they all ended without any particular action, and that this is the first one

(Testimony of Ralph W. Stevens.)

in which there ever has been any proceeding, and I think it is material from that viewpoint.

Mr. Kimball: If the Court please, the record shows that this society was organized in '49 or '50 and the grievance committee was organized in 1950. I can't see the materiality.

The Court: All the organizations involved here, that is, I mean to say what is known as the bureau and the Walla Walla Valley Medical Society weren't in existence in 1941, were they?

Mr. McNichols: No; that is a point I can clear up, your Honor.

Q. Dr. Stevens, prior to the incorporation of the Walla Walla Valley Medical Society, what sort of an organization did you have here among the doctors?

A. Well, we had a county medical society that was unincorporated.

Q. Did you have bylaws and a constitution, and so on? A. Yes. [1637]

Q. Did those contain substantially the same provisions with respect to discipline?

Mr. Kimball: I object to that, your Honor. The best evidence of what the bylaws contain are the bylaws.

The Court: Yes.

Mr. McNichols: I am merely asking if there were such bylaws.

Q. Did you have such a constitution and bylaws?

A. Yes.

Q. Did the society, during that period prior to

(Testimony of Ralph W. Stevens.)

the time they were incorporated, have disciplinary proceedings authorized? A. Yes.

Q. And you are referring back to 1948 and such, you are referring to the same organization that you just mentioned, the Walla Walla society?

A. Yes.

Q. What disposition, Dr. Stevens, was made of the complaint you just mentioned?

Mr. Rosling: If your Honor please, I don't believe the Court has ruled upon the objection.

The Court: No. I don't believe it is necessary to go into detail on that. I will sustain the objection. You may have him testify that there has never been any expulsion or disciplinary action, as far as he knows, except this procedure. [1638]

Mr. McNichols: Very well, your Honor.

Q. Has there ever in your experience in Walla Walla, Dr. Stevens, ever been any situation where a doctor was either suspended or expelled from the society?

A. Since 1947 when I first came here, there has not been any. There may have been some before that.

The Court: I think that is going back far enough.

Q. (By Mr. McNichols): Well, Dr. Stevens, you returned from Chicago when?

A. October the 20th.

Q. You were present prior to that time at the September meeting when the grievance committee was discussed, were you not? A. Yes.

(Testimony of Ralph W. Stevens.)

Q. When you got back, were you informed by other members of the society of the so-called Brooks complaint? A. No.

Q. When did you first learn of it?

A. I learned about it the day I got back from Mr. Fullerton.

Q. Oh, Mr. Fullerton discussed it with you?

A. Yes.

Q. Did he inform you that there was to be a hearing held on it, and so on?

A. I think there had already been a hearing October the 11th, or the hearing of the complaint. I believe that he said [1639] the complaint was being transcribed and nothing could be done until it was returned, and that the board of trustees was handling it and the grievance committee had nothing to do with it.

Q. Mr. Fullerton testified yesterday—I believe you were in court—that he wrote a letter to the state association about the 17th of October and also had a conversation or communication with counsel respecting disciplinary procedures during that time. Was that at your suggestion, or do you recall?

A. I don't recall. I may have told Dr. Page that a state grievance committee had been authorized by the House of Delegates of the Washington State Medical Association in Spokane, in September, 1950.

Q. Had you attended that meeting?

A. No. I may have but I don't recall whether I did that or not at this time.

(Testimony of Ralph W. Stevens.)

Q. How did you happen to learn that?

A. I saw it in Northwest Medicine.

Q. Oh, I see. What was your reaction, Dr. Stevens, when Dr. Robinson proceeded to be critical of the grievance committee?

Mr. Kimball: When?

Mr. McNichols: I say, what was the reaction at the first meeting in September when he was critical of it? [1640]

A. I was surprised.

Q. Subsequently, you became quite concerned about it, didn't you?

A. Well, as the controversy developed, I became more concerned.

Q. Was the part that you took in this controversy taken by you because of your feeling about the grievance committee, basically?

A. Yes; I had originated the grievance committee and had been quite seriously attacked, and I felt it was incumbent upon me to defend it.

Q. Subsequently, there was a motion presented to the society to abolish the grievance committee, wasn't there?

A. Yes.

Q. And there was also an effort on behalf of Dr. Robinson to have a letter written to the Edwards withdrawing the former letter and, in effect, saying that they exceeded their authority?

A. Yes.

Q. Did you strongly resist any effort to have such a letter written?

A. Yes.

(Testimony of Ralph W. Stevens.)

Q. And in doing so, your motive was again, the protection of this grievance committee, was it?

A. That was one of the reasons. [1641]

Q. But, actually, you knew nothing about the facts of the Edwards situation, did you?

A. The Edwards situation?

Q. The complaint about the child, you knew nothing about what the child had swallowed or what had happened other than what is set forth in that complaint?

A. Well, as substantiated by what Dr. Robinson told me.

Q. But you didn't talk to the people at all?

A. No.

Q. And, yet, you felt it incumbent upon you to strongly resist any effort of his to have a letter of correction sent out? A. Yes.

Q. Dr. Stevens, at several places during this proceeding, and particularly before the state grievance committee, you made statements to the effect that the seriousness of this Edwards complaint was in the fact that the Edwards family had threatened a lawsuit. Did you make such statements?

A. I may have mentioned it.

Q. Well, do you recall specifically mentioning it? A. Yes.

Q. And stating that to the state grievance committee as your main reason for acting as you did in this matter?

A. It was the main reason I finished the letter

(Testimony of Ralph W. Stevens.)

to the [1642] Edwards with the statement that the "little patient is none the worse for her experience."

Q. At the time you wrote the letter to the Edwards, did you have in mind this business about the possible lawsuit by them? A. Yes.

Q. Well, now, Dr. Stevens, where did you get that impression?

A. When Mr. Fullerton delivered this complaint to me, he told me that Mrs. Edwards had been fairly agitated about the situation and he said to me that she had told him that if the child had suffered an ill experience or possibly had died from swallowing this material and in not getting the prescription, that they had considered suing him. I realize Mr. Fullerton did not remember that when he testified yesterday.

Q. Well, then, you were basing your statements entirely on statements of Mr. Fullerton which he had made to you? A. Yes.

Q. Did it strike you as odd that he might have been discussing possible death of the child from swallowing Ex-Lax?

A. Well, I didn't think of it at the time. When children swallow things, most of the time you don't know what it is. [1643]

Q. There was some confusion all during this thing about what was swallowed, wasn't there?

A. That's right.

Q. You recognized that, did you not?

A. Yes.

Q. When you talked to Dr. Robinson on the

(Testimony of Ralph W. Stevens.)

street, did you and he discuss what had been swallowed by the child or what they stated had been swallowed? A. I think so.

Q. Was that where the confusion started? Did he have a different view?

A. I think he told me that the child had swallowed sulfa. I wasn't too concerned what the child had swallowed. It didn't make any difference, the child was all right.

Q. Now, what I am trying to pin down here is where this story arose originally about the Edwards being so concerned about a lawsuit. It is your testimony that you got it all from Mr. Fullerton?

A. Yes.

Q. And you presented that as one of your primary arguments to the state grievance committee, didn't you, the fact that a lawsuit had been threatened?

A. I think I only referred to it in connection with this last phrase in the last paragraph of the Edwards letter that I sent to the Edwards, referring to "the little [1644] patient is none the worse for her experience."

Q. Well, just to clear this thing up, I am quoting from your testimony at page 17 of the hearing before the state grievance committee, which is plaintiff's Exhibit 97. You made this statement:

"When this patient made the complaint to Mr. Fullerton, they were very upset. They were threatening to sue for malpractice and we were trying to

(Testimony of Ralph W. Stevens.)

keep from dragging this thing before the public for a matter of \$1.50, which he insisted upon."

A. I think that is essentially what I said now.

Q. At page 21, you are testifying, Dr. Stevens:

"There is some doubt as to what the baby swallowed. It was a square pill and the mother said Ex-Lax. It wasn't so much of what was taken, the reason for putting that in the letter to the Edwards family, there was no damage done, they considered bringing a malpractice suit regarding this matter and the child received no damage from the treatment or lack of treatment."

Then the chairman asked this question:

"Was it your understanding that it was Ex-Lax the child had taken? [1645]

"Dr. Stevens: Yes.

"Chairman: And to take Epsom salts on top of that? That is the statement here.

"Dr. Stevens: That is what the complainant stated in her letter that Dr. Robinson stated that.

"Chairman: Did he give any reason why he was giving one cathartic on top another?

"Dr. Stevens: No. He had a very hazy impression of it."

The thing I am concerned about, Dr. Stevens, is why didn't you mention to those doctors who were hearing this thing this matter about the possibility of a poison being involved, rather than Ex-Lax?

A. I think I stated in the testimony that I didn't think it mattered what the child had swallowed.

Q. Well, the doctors who were hearing this mat-

(Testimony of Ralph W. Stevens.)

ter were quite concerned about the statement in there that Dr. Robinson had prescribed a cathartic on top of a cathartic, weren't they? A. Yes.

Q. Wasn't that strongly considered by them at this time? A. I don't think so.

Q. Well, they discussed it at some length, didn't they, at the meeting? [1646] A. Yes.

Q. Is your answer yes? A. Yes.

Q. Dr. Stevens, did you take any part in the arrangements for the hearing before the trustees on the 21st of November, 1950? A. No, sir.

Q. Now, there was a meeting held, as I recall, Dr. Stevens, on the 20th of November, was there not? A. Yes.

Q. I will show you the minute book. I am referring to the meeting that was called——

A. Special meeting.

Q. ——at the request of Dr. Robinson.

The Court: When was that trustees' meeting held?

A. 21st.

The Court: 21st?

Mr. Sembower: 21st.

Mr. McNichols: Yes, your Honor, the trustees' meeting at which the hearing was held.

The Court: Yes, that was the one you referred to just recently?

Mr. McNichols: Yes.

I don't seem to find minutes for the meeting.

Mr. Kimball: That was the 20th, I think, Mr. McNichols. [1647]

A. Well, I recall the meeting.

(Testimony of Ralph W. Stevens.)

Mr. McNichols: Perhaps you can find it, Mr. Kimball. We seem to jump here. Oh, I see where we are.

Q. Well, in any event, Doctor, you remember the meeting? A. Yes.

Q. Do you know who set the date for that meeting, by any chance? A. No, I don't.

Q. Who normally did in the society set the date for the meetings?

A. I think the president did, probably, Dr. Page.

Q. The meeting of November 20, 1950, was the meeting at which the vote was taken on the continuance of the grievance committee? A. Yes.

Q. With the possibility of writing a letter to the Edwards. It has been the testimony here that the vote on the question of the grievance committee was 14 to 15, I believe? A. Yes.

Q. Does that sound accurate? A. Uh huh.

Q. Did you enter into the active discussion there? A. Yes.

Q. Did you know at that time there was a meeting set for the [1648] following night before the trustees on the Brooks' complaint against Dr. Robinson? A. I may have.

Q. Were you somewhat concerned, Dr. Stevens, at the vote at that meeting? A. Yes, I was.

Q. Did you feel that it was very likely that the existence of the grievance committee was jeopardized? A. Yes.

Q. And your subsequent actions in this controversy, were they influenced by that feeling?

(Testimony of Ralph W. Stevens.)

A. I believe so.

Q. Now, when was the annual meeting of that year? A. December the 14th.

Q. December the 14th? A. Uh-huh.

Q. You were quite agitated at the December 14th meeting, were you not? A. Yes.

Q. Now, that was a meeting at which there was a guest speaker, was there not? A. Yes.

Q. Were your associate members present there also? A. I think so.

Q. Incidentally, to clear that, could you tell us the [1649] different kinds of members in the society? Are there active members?

A. Yes, there are active members who are in active practice and the doctors at the Veterans Hospital are courtesy members, more or less.

Q. How many of them are there?

A. They don't pay as much dues.

Q. How many of those courtesy members would you say there are?

A. Oh, about ten or twelve.

Q. Do they attend the annual meeting, normally?

A. Not all of them, they don't have a vote.

Q. Don't attend ordinary business meetings?

A. No.

Q. But they normally attend the annual meeting, do they?

A. Yes. There was a scientific meeting.

Q. Well, there has been some reference here, Dr. Stevens, to the statement you prepared and gave

(Testimony of Ralph W. Stevens.)

at the annual meeting on the 14th of December. In preparing and making that statement, were you motivated primarily by your concern about the grievance committee?

A. I was motivated primarily by that and also by the letter which Dr. Robinson sent to all the doctors the first part of December, 1950.

Q. His letter complaining about the grievance committee, and [1650] so on? A. Yes.

Q. He had gone into some detail in that letter criticizing the committee, hadn't he? A. Yes.

Q. Some of your remarks were probably a little indiscreet that night, were they not, Doctor?

A. I don't think so.

Q. Did you feel that they might be somewhat inflammatory with other members of the society in view of the fact that there was this next meeting scheduled for the next night?

A. I didn't place the two together at all at that time. I didn't consider the two, what effect it would have.

Q. You knew, however, of the meeting the next night, didn't you?

A. Which meeting was that again?

Q. Oh, wait a minute. Perhaps I am the one that is confused. I'm sorry, Dr. Stevens. This particular document wasn't given at that meeting of November 20th, it was at the December 14th?

A. No.

Q. What remarks, briefly, did you make at the November 20th meeting?

(Testimony of Ralph W. Stevens.)

A. Well, I again explained the function of a grievance [1651] committee, how it would improve public relations and how it would be effective if we had co-operation of the doctors in wanting to have the small grievances or disputes over fees settled amicably.

Q. Did you raise at that meeting some of the points you raised at a later meeting with respect to Dr. Robinson's having resigned from the bureau?

A. I don't believe so.

Q. Did you bring out that he wasn't co-operating with the grievance committee?

A. I pointed out he wasn't co-operating with it because he stated we had no business to ask him anything about his relationships.

Q. Now, he had substantial support in his objections to the grievance committee, did he not?

A. Yes, he did.

Q. And you had no rules or regulations to go by, did you? A. No.

Q. Did Dr. Bohlman ever function as a part of the grievance committee?

A. I believe he was invited to hear the original Brooks complaint, but that was when I was not in town, and I think after we were making up rules and regulations of the grievance committee, I gave him a copy of the ideas that I had and asked him to make any suggestions or [1652] changes, but we had never had any meeting of the full committee.

Q. Well, from the month of December, 1950, on,

(Testimony of Ralph W. Stevens.)

you felt a rather strong animosity toward Dr. Robinson, didn't you?

A. No, I didn't feel any animosity particularly.

Q. Did you feel animosity toward him the night you gave this paper or this discussion at the annual meeting?

A. It wasn't so much animosity as I was disgusted with him.

Q. Well, I don't like to go over this all again, but you did state something about the Russians being babes in the woods compared to Dr. Robinson?

A. Yes.

Q. That he had almost wrecked the grievance committee?

A. Yes.

Q. You accused him of distorting the facts?

A. Yes.

Q. And such as that. One thing that I am curious about, in that particular letter that we are discussing, the question of Dr. Robinson's attitude, you say, referring now to Plaintiff's Exhibit No. 384: "But what about providing a code of ethics? He further says"—I assume you are quoting Dr. Robinson—"but I cannot accept the right of anyone, doctor or layman, to get his hands on the private trade which I make with the patient whereby he and I decide how much of his labor [1653] will be traded for the labor of my services to him," and your statement, "The AMA would be interested to hear of this version of co-operation."

Did you inform the AMA of his version of co-operation?

A. No. I did not inform the AMA.

(Testimony of Ralph W. Stevens.)

Q. What was the purpose of that statement? What did you have in mind there?

A. The AMA was trying to promote better public relations and his statement that the medical profession had no business interfering with what he charged was against the principles of better public relations.

Q. Well, you thought he should co-operate with the grievance committee on a public relations angle?

A. Yes, that is why we set it up.

Q. It was a public relations committee, you felt?

A. Well, it was one of the functions of it, to promote better public relations.

Q. It didn't succeed very well in that, did it?

A. Would have if the dollar and a half letter had been followed.

Q. One thing, Dr. Stevens, I want to ask you before I forget, there has been some reference in the discovery proceedings here later on in this controversy about your writing to Dr. Benson of the state association and [1654] his writing to you about the rehearing on Dr. Robinson's case before the AMA.

A. Dr. Benson only received a copy of the letter I sent to Dr. Cunniffe.

Q. Oh, I see. And then did you receive correspondence from Dr. Benson about it?

A. No; he called me, I think.

Q. Oh, he telephoned you? A. Yes.

Q. What did you say to him and what did he

(Testimony of Ralph W. Stevens.)

say to you in that conversation? What was his status at that time?

A. He was president of the state association, and he said he received a copy of my letter and he thought it was very good and he agreed with it.

Q. That was the letter which you wrote to Dr. Cuncliffe? A. Yes.

Q. And that was a letter written, I believe, February—— A. 21st, I believe.

Q. February 21st of 1952, Plaintiff's Exhibit 169? A. Yes.

Q. Is that the letter to which you refer, Dr. Stevens? A. Yes.

Q. You had sent a carbon copy of that, then, to Dr. Benson? A. Yes.

Q. Go on with the conversation, briefly, between yourself and [1655] Dr. Benson.

A. Well, I told him that the members I had talked to of the society here felt that something should be done about it; that we felt that we were right in this controversy, and that we should appeal to the Judicial Council or to the board of trustees to have a rehearing.

Q. You thought you were right in the controversy about the grievance committee and such as that? A. Yes.

Q. Your purpose in writing this letter, which we will discuss a little later, was motivated again by your strong feelings about the grievance committee and that Dr. Robinson was after it?

A. Well, it was not only the strong feelings I

(Testimony of Ralph W. Stevens.)

the state grievance committee? A. I think so.

Q. Do you recall when you might have made such a suggestion, approximately?

A. Some time after November 22nd—or 21st meeting, I think. [1658]

Q. At the time you made that suggestion, did you have in mind the fact that the grievance committee vote at the meeting of November 20th was 14 to 15? A. I believe I would.

Q. I believe you testified also that, in your opinion—well, I will ask you the question: Did you during these proceedings feel that rather drastic action was necessary against Dr. Robinson in order to salvage the grievance committee set-up?

A. No, I didn't.

Q. Well, I am going to refer just a moment, Dr. Stevens, to page 70 of your deposition, which was taken in this case in January of this year, in which I proposed to you the following questions:

“Q. One of your primary concerns in writing that letter was the existence of your grievance committee, was it not? A. Yes.

“Q. And you felt that unless Dr. Robinson were expelled from the society, your grievance committee was endangered, did you not? A. Yes.”

Do you recall testifying to that effect?

A. Yes, I do.

Q. Was that your feeling at that time? [1659]

A. Well, it wasn't the primary reason, it was one of the primary reasons.

Q. One thing I wanted to mention, Dr. Stevens,

(Testimony of Ralph W. Stevens.)

are you familiar with the letter which Dr. Pratt wrote to Dr. Louis Robinson, the father of the plaintiff? A. I never saw it.

Q. Do you recall any discussion where the question was brought up as to whether or not it would be advisable to write to his father? I am referring now to Plaintiff's Exhibit 114. Do you recall ever having seen that letter?

A. No, I have never seen this letter.

Q. Well, that letter bears the date of May 24th and is signed by Dr. Pratt. Do you recall the expulsion meeting was on the 22nd? A. Yes.

Q. Did you, Dr. Stevens, attend any meeting other than the expulsion meeting at that approximate date? A. No, I didn't.

Q. Did you ever hear of such a meeting having been held? A. No, I haven't.

Q. Now, there is one question I wanted to ask you, too, Doctor, about the hearing before the state committee in which you were answering questions put to you by the chairman of the state grievance committee in which—— [1660]

The Court: Let's see, what was the date of that?

Mr. McNichols: This was a meeting held on the 22nd of April, your Honor, 1951, before the state grievance committee.

The Court: Yes.

Mr. McNichols: (Reading):

“Dr. Calhoun: I believe you stated there was no co-operation by Dr. Robinson with the committee?

“Dr. Stevens: Yes.

(Testimony of Ralph W. Stevens.)

“Dr. Rownd: And you had a discussion in a regular meeting about this case before the letter was written?

“Dr. Stevens: Yes.”

Q. When you made that statement, Dr. Stevens, were you referring to the informal discussion you had with Dr. Yengling about the Edwards complaint? A. I don't understand your question.

Q. Well, the question I had was you were asked at the state grievance committee by Dr. Rownd: “And you had a discussion in a regular meeting about this case before the letter was written?”

A. Yes.

Q. And you answered “Yes.” Now, that regular meeting he was referring to, were you referring to the informal conversation you had with Dr. Yengling prior to writing the letter to the [1661] Edwards?

A. No, I was referring to the society meeting of September 26, 1950, which came four or five days later after I had talked to Dr. Robinson on the street.

Q. Was the writing of the letter discussed at that meeting?

A. No, I wrote the letter a day or two—a couple of days after the meeting.

Q. Oh, I see. The letter, it wasn't brought up then? A. No.

Q. Or the merits of the complaint?

A. No, just the question of the grievance com-

(Testimony of Ralph W. Stevens.)

mittee and Dr. Robinson's statement of whether he would co-operate with it.

Q. But none of the merits of the Edwards complaint were discussed at that meeting?

A. No.

Q. I am going to show you now, Dr. Stevens, Plaintiff's Exhibit 169, which purports to be a letter dated February 21, 1952, directed to Edward R. Cunniffe, chairman of the Judicial Council of the AMA, and purportedly signed by you. Would you examine that exhibit? A. I know the letter.

Q. That is a letter which you wrote to Dr. Cunniffe on that date? A. Yes, sir.

Q. On the third page of that letter it is indicated that a [1662] copy was sent to Dr. John W. Cline, President of the AMA, and Dr. R. A. Benson, President of the Washington State Medical Association. Did you also send carbon copies to those people?

A. Yes, I did.

Q. How did Dr. Cline figure in the picture?

A. Well, he was president of the American Medical Association.

Q. Had he taken any part in this proceeding at any time to your knowledge? A. No.

Q. What was your purpose in sending a copy of this to Dr. Cline?

A. Well, the purpose was that we felt, or I felt, that the action of the Judicial Council was entirely wrong in that they did not consider the proper evidence and judged the case improperly.

Q. You felt that you should inform Dr. Cline of

(Testimony of Ralph W. Stevens.)

that? A. Yes, I felt it was important.

Q. You, in fact, went much further in the letter, though, in discussing this matter than that point of view? A. Yes——

The Court: I didn't hear your question.

Q. (By Mr. McNichols): I say, you went much further than that in the letter which you [1663] wrote? A. No, I don't believe so.

Q. Reading from paragraph two of Exhibit 169, Dr. Stevens, it reads as follows:

"In August, 1950, a minor complaint against Dr. Robinson was filed and an attempt was made to settle this amicably, but he refused to co-operate claiming the grievance committee had no right——"

The Court: Paragraph two, is it?

Mr. McNichols: I am reading from paragraph two, your Honor.

The Court: All right.

Mr. McNichols: (Reading continued):

"He made the complaint even more serious by attempting to blackmail relatives of the complainant to obtain the original letter the grievance committee sent to dispose of the complaint."

Q. Did you feel that the president of the American Medical Association and the president of the state medical association should be informed of your opinion that Dr. Robinson was a blackmailer?

A. I wanted them to understand what the situation was in the background of this case that the Judicial Council sat on. [1664]

Q. Excuse me, were you finished?

(Testimony of Ralph W. Stevens.)

A. That the Judicial Council took on Dr. Robinson's appeal.

Q. Well, the Judicial Council and the State Medical Association had complete transcripts of this whole transaction, didn't they?

A. They had not received any answer from the Judicial Council about the case except the telegram, I believe.

Q. No, but I mean prior to the time you wrote this letter, which was February 21, 1952, both the state association and the Judicial Council of the AMA had complete files on the case, did they not?

A. I should think so.

Q. You also indicated in this letter, did you not, Dr. Stevens, that Dr. Robinson had made false statements all through this proceeding?

A. Yes, I did. I can point them out to you at this time.

Q. And you were taking it upon yourself to judge the merits of the whole controversy, however, weren't you, in this letter? A. No, I wasn't.

Q. Well, you made a statement of fact to the effect that he was lying and that he was a black-mailer?

A. I felt that they gave undue consideration to some of Dr. Robinson's claims.

Q. Your purpose in writing this letter was to influence Dr. [1665] Cunniffe, was it not, in his decision on this matter?

A. Well, I hoped for a rehearing either by the

(Testimony of Ralph W. Stevens.)

Judicial Council or by the Board of Trustees of the American Medical Association.

Q. And you were successful in obtaining that one way or another, were you not? A. Yes.

Q. You concurred, didn't you, Dr. Stevens, in the decision that the society should seek a rehearing on the Robinson matter? A. Yes.

Q. Now, this letter to which I have been referring is signed by you as chairman of the Walla Walla Valley Medical Society Grievance Committee? A. Yes.

Q. And you state in the last sentence of the introductory paragraph: "I would like to give you our reaction to this decision."

To whom were you referring in the plural there, to the other members of the committee?

A. Some of the other members of the society.

Q. Of the society? A. Uh-huh.

Q. Are you familiar enough with the letter?

A. Yes. [1666]

Q. To whom did you show this letter prior to the time you sent it?

A. I don't believe I showed it to anybody.

Q. Did you discuss the wording of it with other members of the society?

A. I think I told Dr. Tompkins that I was planning to send it.

Q. Did you indicate to him the contents of it?

A. Roughly.

Q. What did he say?

A. He thought it would be all right.

(Testimony of Ralph W. Stevens.)

Q. He concurred that it should be sent?

A. Yes.

Q. You also—— A. He had no objection.

Q. Did you also inform him you were going to send a copy to the president of the AMA?

A. Yes.

Q. Did you discuss it with any other member of the society? A. No.

Q. Did you discuss it with Dr. Yengling?

A. No.

Q. He was still on the grievance committee, wasn't he?

A. I don't know whether he was on at that time or not.

Q. In any event, you didn't discuss it with any other member [1667] of the grievance committee?

A. No.

Q. However, you did sign it as chairman of the grievance committee?

A. That was my official title.

Q. You testified on deposition, however, that you did show it to someone else, didn't you? Have you looked at your deposition recently?

A. I haven't looked at it. Dr. Tompkins might have seen it.

Q. If I am not mistaken, you testified on your deposition that you had a discussion with Dr. Yengling. A. Well, I don't recall, I may have.

Q. At that time in your deposition taken in January, I asked you the question:

“Q. Did you consult with other members of the

(Testimony of Ralph W. Stevens.)

local grievance committee prior to writing this letter?"

Having reference to the Cunniffe letter.

You said:

"A. I consulted with Dr. Yengling.

"Q. Did you discuss it with all the other members of the grievance committee? A. No."

However, it is your testimony that you showed it to Dr. Tompkins, probably, and no one else? [1668]

A. Yes.

Q. You were present, Dr. Stevens, at the meeting of May 22nd, 1951, the expulsion meeting?

A. Yes, sir.

Q. Were you present all through the meeting?

A. Yes, sir.

Q. What lay persons appeared at that meeting, if you recall?

A. Mr. Noel Edwards was there.

Q. Was he the only one? A. I think so.

Q. Do you know how he happened to be there?

A. I don't know whether Dr. Robinson asked him to come or not. He said something about refuting the whole thing in a few minutes.

Q. Do you recall Dr. Robinson at that time distributing copies of a page from the record of the hearing before the state grievance committee?

A. I have a faint recollection of it.

Q. Did you examine it at that time?

A. I think so.

Q. You think maybe Dr. Robinson had Mr. Edwards come?

(Testimony of Ralph W. Stevens.)

A. I think so. It was about his testimony that there was some conflict, I believe.

Q. However, in any event, he was the only witness that appeared? [1669] A. Yes.

Q. Did the membership of the society ever hear any of the other witnesses in this matter?

A. No.

Q. Do you remember what Noel Edwards testified to in the May 22nd hearing?

A. It was, as I recall, the use of the word "syphilis," whether Dr. Robinson used the word "syphilis" or "virus," and I do not recall exactly what he said at this time.

Q. How long did that meeting last, Dr. Stevens? Approximately, if you recall?

A. About three hours, I guess.

Q. It was comparatively a long meeting, wasn't it? A. Yes.

Q. Do you recall being at meetings of the society during this controversy when assessments were discussed with respect to paying for the Robinson case? A. Yes.

Q. How many times did that happen, do you know?

A. Oh, I think only one assessment of \$6.46 was made prior to his expulsion.

Q. Was that discussed in open meeting?

A. I don't remember whether it was or not. I imagine the reason for it was probably discussed, for court reporter expenses, I believe. [1670]

Q. It was referred to, was it not, in effect, as the

(Testimony of Ralph W. Stevens.)

Robinson assessment or the assessment in the Robinson matter?

A. I think they understood what it was for.

Q. Was there some feeling among the doctors against such a thing, paying the assessment?

A. Well, the amount was very small. I don't know, some probably would be affected by it.

Q. Did you feel it was somewhat of a burden to have to pay for it?

A. No, I didn't think it was a very large amount.

Q. Well, during this controversy, Dr. Stevens, when it became apparent that some drastic action was being considered, as you took part in it did you have in mind the fact that it could have a substantial effect on the entire future of Dr. Robinson?

A. Yes, I did.

Q. Were you aware at the time that if it went as far as expulsion, that it would deprive him of any hospital privileges in this city?

A. Yes, I did.

Q. That was common knowledge among the members of the society, was it not? A. Yes.

Q. And you, during this period, were further aware of the [1671] fact that the loss of those hospital privileges would be extremely damaging to any physician, were you not?

A. It would have some damage, although as I testified in my deposition, doctors were practicing in Walla Walla who hadn't hospital privileges.

Q. There seems to be some question about that. Did you find that in your deposition?

(Testimony of Ralph W. Stevens.)

A. No, it wasn't in there, but I remember putting it in and I objected to leaving it out of my deposition and my counsel remembers that I testified about it.

Q. Well, in any event, you had that over-all picture in mind during this proceeding?

A. Yes.

Q. Who else spoke at the meeting of May 22nd, Dr. Stevens, if you remember?

A. I would have to look at the minute book.

Q. Do you recall Dr. Robinson being asked to leave the meeting? A. Yes, I do.

Q. Approximately how long was he out, if you recall?

A. Oh, for about forty minutes, at least.

Q. Was there a discussion going on during his absence? A. Yes.

Q. These minutes are somewhat lengthy, Dr. Stevens. They run twenty pages or more. A lot of this is the reading [1672] of the recommendations.

A. Yes, I understand.

Q. See if there is any reflection in the minutes as to who spoke or what was said during his absence.

A. This was during his absence, you mean?

Q. Well, at one point here he was excused from the hearing. I am referring, for the record, to the minutes of the meeting of the Walla Walla Society on May 22nd, 1951, as contained in Defendants' Exhibit 447.

A. You mean who spoke while he was gone?

Q. Yes, and what was said. A. Oh——

(Testimony of Ralph W. Stevens.)

Q. It may not be reflected there, I don't know.

A. I don't think there is very much in here.

Q. Do you of your own recollection recall who spoke at the meeting?

A. Well, several motions were made and an amendment to the motion was made.

Q. Who, if you recall, Dr. Stevens, made the motion to expel Dr. Robinson?

A. Dr. Page amended the motion to suspend him and the amendment carried and the motion carried.

Q. Were the doctors informed during the meeting that Noel Edwards had made conflicting statements with respect to what Dr. Robinson had said previously? [1673]

A. Yes, I believe so.

Q. One thing, Dr. Stevens, do you recall the approximate time that the telegram was received from the AMA on the first appeal? In general?

A. Some time around the 1st of February, 1952, I believe.

Q. Well, then there was, was there not, a concerted effort in meetings of the society to obtain a rehearing?

A. Not at that time. We didn't know why the society action was reversed and I think the efforts at that time were to find out from the judicial council where we were at fault, whether we should have to go back and reprocess some of the technical features of the Robinson case.

Q. Was the telegram from Dr. Cunniffe announcing that Dr. Robinson's appeal had been sustained read to the membership?

(Testimony of Ralph W. Stevens.)

A. I don't recall.

Q. Did you take an active part yourself in the attempts to obtain a rehearing?

A. Not any other than the letter I wrote to Dr. Cunniffe and Dr. Cline and Dr. Benson, the same copy which you have just referred to.

Q. Did you yourself, Dr. Stevens, question the authenticity of that telegram from Dr. Cunniffe?

A. Well, it wasn't so much the authenticity of the telegram, [1674] but the telegram referred to the expulsion of Dr. Robinson from the Washington State Medical Society and we knew he hadn't been expelled from the Washington State Medical Society because we had expelled him.

Q. Wasn't he automatically expelled from the state association?

A. I imagine it would automatically follow, but——

Q. But, in any event, there was no question in your mind but what the telegram came from Dr. Cunniffe, the chairman of the Judicial Council?

A. I don't think—telegrams usually aren't signed in ink.

Q. No, of course not. Did any other officials of the society, to your knowledge, indicate that they questioned the authenticity of the telegram and the name that appeared thereon?

A. Oh, some of them may have.

Q. Do you recall any specific person?

A. No, I don't.

Q. Do you recall, Dr. Stevens, some time between

(Testimony of Ralph W. Stevens.)

the receipt of that telegram and the rehearing Dr. Tompkins playing a recording of a telephone conversation in a meeting?

A. I didn't recall it when you asked me that in my deposition, but I heard enough about it since then that I think I was at the meeting and I recall something.

Q. It appears in the minutes somewhere, if I can find it. [1675]

A. It was a very poor recording and I don't think I heard very much of what it said or it would have made more impression on me.

Q. Reading from the minutes of the society meeting of April 8th, 1952, as contained in Defendants' Exhibit 447:

"The president called the meeting to order, advising the society that Dr. Tompkins had a recording of his recent telephone conversation with Dr. Howard, assistant secretary of the AMA, relative to the proper procedure in petitioning the Judicial Council for a rehearing in the Robinson matter. Dr. Tompkins presented the transcript for the information of the members present."

Do you recall hearing that recording?

A. Yes, I think so.

Q. Could you hear it, or was it so bad you couldn't understand it?

A. Well, as I said, I didn't understand very much of it.

Q. Did it appear to be a conversation between Dr. Tompkins and this Dr. Howard?

(Testimony of Ralph W. Stevens.)

A. I assume so.

Q. But you can't tell us anything that was said in the conversation? [1676]

A. No.

Q. I assume that you could hear the name of Dr. Robinson mentioned in the conversation?

A. I don't remember.

Q. Well, then, do you recall what individuals in the society took the active part in this petition for rehearing?

A. The board of trustees.

Q. The board of trustees of the society in 1951?

A. Yes.

Q. Or would that have been '52?

A. '52, I believe, yes.

Q. And I believe Dr. Tompkins took quite an active part, did he not?

A. He was the president the year before in '51. He was still on the board.

Q. To refresh your memory, I think Dr. Keyes was president in 1952.

A. Dr. Tompkins was still on the board of trustees.

Q. If you remember, did the society authorize the various officials to go to the Los Angeles hearing and the Chicago hearing?

A. I believe so.

Q. And do you know how their expenses were handled? Were they taken care of by the society?

A. I think so. [1677]

Q. And I believe you testified previously that the state association concurred in the attitude of the

(Testimony of Ralph W. Stevens.)

society that they should seek a rehearing on this matter?

A. Just Dr. Benson in his telephone conversation to me.

Q. Have you ever been on the board of either of the hospitals, Dr. Stevens?

A. I have been on the board of St. Mary's Hospital.

Q. By the board, that is the board of directors, is it? A. It is the staff board.

Q. Staff. They are all physicians?

A. Yes.

Q. How are they chosen?

A. I think they are elected by the staff.

Q. By the staff of the hospital?

A. Of the hospital, yes.

Q. The staff includes, I assume, all members of the society in good standing?

A. Who are on the staff of that hospital, who are on the active staff of the hospital.

Q. What does it require to be on the staff?

Mr. Smith: Your Honor, I think the exhibit speaks for itself in that regard. They have introduced the exhibit of the constitution and bylaws of the staff. I would suggest that the exhibit speaks for that, rather than the witness.

Mr. McNichols: I am merely trying to set background, [1678] Mr. Smith, to get a general idea of how this thing operates.

The Court: The best evidence would be their constitution and bylaws.

(Testimony of Ralph W. Stevens.)

Mr. McNichols: Yes, your Honor. I won't pursue it on that basis.

The Court: Unless you want to show his knowledge of what they show. I think that is already presumed.

When do you have your elections, Doctor, to the medical society?

A. They usually were the last month of the year in December.

The Court: December?

A. Yes.

The Court: And you elect your officers for just a year?

A. Yes.

The Court: How many trustees were there?

A. Well, there is the president, the vice president, the secretary-treasurer, and two other trustees.

The Court: I see. The officers are ex officio on the board of trustees?

A. Yes.

The Court: Is the retired president a member of the board, the immediate past president?

A. I think the new constitution provided that.

The Court: And are the trustees elected for just one-year [1679] terms?

A. One year.

The Court: Let's see, Dr. Page was president in 1950, and Dr.—

A. Tompkins.

The Court: —Tompkins in 1951?

A. Yes.

(Testimony of Ralph W. Stevens.)

The Court: And Dr. Keyes in 1952?

A. '52.

The Court: All right, go ahead.

Q. (By Mr. McNichols): Do you recall, Dr. Stevens, a letter written by Dr. Morton Tompkins to Mr. E. B. Howard, assistant secretary of the AMA, in April of 1952?

A. I don't think I ever saw it. I heard it referred to in this action.

The Court: Dr. Yengling was on the grievance committee with you, he was a trustee, too?

A. No, he wasn't.

The Court: He has never been a trustee?

A. He has at other times.

The Court: Not during this period?

A. No, sir.

Q. (By Mr. McNichols): He was, incidentally, along that line, on the state grievance committee actually, wasn't he? [1680]

A. He was on the state grievance committee.

The Court: Oh, yes, I remember that testimony, yes.

Q. (By Mr. McNichols): This is the letter I was referring to, Plaintiff's Exhibit 206.

A. Yes, I have never seen this letter before except in the trial here.

Q. This was written by Dr. Tompkins, apparently on behalf of the society, and the last sentence of paragraph one, he says:

“Should the Judicial Council decide to let the

(Testimony of Ralph W. Stevens.)

decision stand, the local society wishes to act at once.”

Do you recall the local society discussing in a meeting what they would do in the event that wasn't upheld—in the event this was affirmed?

A. I think that they were probably thinking of appealing to the trustees of the American Medical Association.

Q. Oh, I see. The trustees are a separate body from the Judicial Council?

A. Yes, they are over the whole group, they are over the whole body or Councils of the American Medical Association, except the House of Delegates.

Q. Was there discussion after the second ruling about appealing it to the trustees of the AMA?

A. No. [1681]

Q. They just proceeded to reinstate Dr. Robinson after that?

A. Yes.

Q. Was there any discussion, to your knowledge, after the rehearing, Dr. Stevens, of starting all over again in their proceedings against Dr. Robinson?

A. The first Judicial Council hearing?

Q. No, after the second decision or between the two decisions, was there any discussion in society meetings about starting over again in the process of disciplining Dr. Robinson?

A. I think there was some discussion in the board of trustees, since we had never obtained a very good idea of what was wrong with our disciplinary action until some time after the telegram was received.

(Testimony of Ralph W. Stevens.)

Q. Well, the action itself was wholly unique, these proceedings you followed in this disciplinary proceeding?

A. Well, it was unique only in that the state grievance committee had entered the picture.

Q. Well, the action of your grievance committee originally was unique, wasn't it?

A. Well, there had never been one before.

Q. And the action of the state grievance committee was unique? A. For the same reason.

Q. In fact, do you know of your own knowledge whether there [1682] had been any disciplinary appeal to the Judicial Council of the AMA in the two years preceding that period?

A. I wouldn't know.

Q. I will be through in a minute, Dr. Stevens. I was going to ask you one thing, have you ever remarked to people about your impressions of Dr. Robinson's mental capacity? A. Yes.

Q. What did you say?

A. At what time do you refer?

The Court: If this is impeaching, I think specifically the time and to whom he said it should be pointed out, unless you want to get an admission he said it generally.

Mr. McNichols: I wasn't thinking particularly of impeaching at this time, your Honor.

The Court: Oh, all right.

Q. (By Mr. McNichols): Perhaps I can refer you to the part I am thinking of, Dr. Stevens, and

(Testimony of Ralph W. Stevens.)

I am not doing it for impeachment but merely to refresh your memory.

The Court: I think I overlooked that this is an adverse witness. You can bring out anything that you can bring out that is material, of course.

Q. (By Mr. McNichols): Referring to your deposition, Dr. Stevens, if this will assist you in point of time, which was taken in January of this year: [1683]

“Q. Well, then, what did you say to these people?

“A. Well, everybody knew what came out of the fuss and discord that he had caused and people were surprised that he brought suit against the local society, and when they asked me about it, I just said, ‘Well, I don’t think that you can blame the man too much personally because I don’t think he is well.’

“Q. You were inferring that he was mentally unbalanced? A. Possibly.

“Q. Did you tell these people that he was crazy?

“A. No.

“Q. Did you tell them he was suffering from mental delusions? A. Yes.

“Q. Did you tell them he was paranoid, in your opinion? A. Possibly.

“Q. To whom did you tell the things?

“A. I don’t know, casual acquaintances.

“Q. Various people? [1684] A. Yes.

“Q. On numerous occasions?

“A. No, not numerous.

“Q. On several occasions?

(Testimony of Ralph W. Stevens.)

“A. Several occasions.

“Q. Had you made such remarks to anyone prior to this controversy?

“A. Which controversy?

“Q. The controversy which Dr. Robinson had with the local society and various individuals.

“A. No.”

Does that sound——

A. Yes, I recall that testimony.

Q. Had you ever made such observations, Dr. Stevens, before this dispute arose?

A. No, I hadn't.

Q. They were all made either during or after this dispute?

A. They were probably made after Dr. Robinson brought suit against us in Superior Court. People would ask me why is he bringing the suit against me, and I would tell them, “I think he is suffering from persecution complex.” If they were a doctor or a dentist or somebody who knew something about medicine, I might say, “I think he has paranoid symptoms.”

Q. You don't consider yourself an expert on psychiatry by [1685] any means, do you?

A. No, I don't.

Mr. McNichols: I think that is all, Dr. Stevens.

Mr. Kimball: No cross.

Mr. McNichols: Your Honor, there is one question about some of the defendants we might wish to call with respect to damages at a later time. I suppose they can be excused——

The Court: You may reserve that right.

Mr. McNichols: Yes.

The Court: They will be available.

Mr. McNichols: Yes, that is all, Dr. Stevens.

(Witness excused.)

Mr. Sembower: I will ask Dr. Morton W. Tompkins to take the stand.

MORTON W. TOMPKINS

called as an adverse witness by the plaintiff, being a defendant herein, and being first duly sworn, was examined and testified as follows: [1686]

* * *

Direct Examination

By Mr. Sembower:

Q. Will you state your full name, please?

A. Morton W. Tompkins.

Q. What is your address, Dr. Tompkins?

A. 505 Craig Street.

Q. And what is your office address?

A. My residence.

Q. And what is your office address?

A. 120 East Birch.

Q. And what is your profession?

A. Physician and surgeon.

Q. Do you have any specialties, Dr. Tompkins?

A. Yes.

Q. What are those, please? [1687]

A. Obstetrics and gynecology.

Q. What official positions have you held in the

(Testimony of Morton W. Tompkins.)

Walla Walla Valley Medical Society, Dr. Tompkins?

A. I have been a delegate to the state House of Delegates.

Q. When was that?

A. I am not sure of the exact dates. I believe the first time was approximately in 1942. I may or may not have been a delegate later.

Q. How long is the term for a delegate?

A. One year.

Q. One year. You do recall the one term, but you think you may have served another term?

A. I am not sure about just after the war.

Q. Any other positions?

A. I have been a member—I was secretary of the society two years during the war years. I have been a member of the board of trustees and president of the society and, as past president, a member of the board of trustees.

Q. Would you give us the dates for those as nearly as you remember?

A. I am not sure how many years I served as member of the board of trustees prior to 1949, but I believe it was one. In 1949, I was a member of the board of trustees. I was elected as president of the society December 14, 1950, became past president the second Thursday in [1688] December of 1951, and was a member of the board of trustees until the second Thursday of December, 1952.

Q. And as president, you served what term?

A. The calendar year 1951.

(Testimony of Morton W. Tompkins.)

Q. I believe you are installed on the second Thursday of December, is that not correct?

A. Of the previous year, yes.

Q. And that would be the second Thursday of December, '51, when you began your term?

A. No, '50.

Q. '50, and then you ended your term the second Thursday of December in '51? A. Correct.

Q. Who succeeded you as president, Dr. Tompkins?

A. Excuse me, did you say precede or succeed?

Q. Succeeded you?

A. Dr. Keyes succeeded me.

Q. And your predecessor was Dr. Page?

A. Correct.

Q. Now, what positions have you held in the Walla Walla Valley Medical Service Bureau since January 1st, 1950, or in connection therewith?

A. You may correct me on this, but I don't believe I have had any.

Q. Well, now, I noticed in the bureau minutes that on [1689] February the 28th, 1950, there is a notation that you were elected director of the Walla Walla area in the Washington Physicians Service Corporation. A. Yes.

Q. Is that related activity to the bureau?

A. Only indirectly. Before the laws were changed in the state of Washington, in order for the bureaus to operate they had to have a backing insurance company, and just about this time the laws of the state were changed so that that was no longer

(Testimony of Morton W. Tompkins.)

necessary and the insurance company was liquidated, and I think that I was the so-called area representative to vote the proxies of the stockholders at that liquidation.

Q. I see.

A. It involved, if I recall correctly, it involved one meeting in Seattle and merely to hold the vote to liquidate, and that was all.

Q. Was that a program carried out under the direction or chairmanship of Dr. Berge, if you recall?

A. I could not answer that.

Q. And then were you elected in May, 1952, a member of the—is it the title governor of the fourth district of the Medical Defense Fund?

A. That was '52.

Q. '52, yes, according to my information. [1690]

A. There seemed to be some confusion about that particular thing. I was notified that I had been elected as governor of the fourth district of the Medical Defense Fund, and yet I got no information about any cases that were pending or lawsuits for malpractice that were being filed, and finally about a year later it came out that apparently an error in the office, I was sent the appointment approved by the board of trustees, but the person who was retiring was never notified that he had been retired and he had been carrying on all the business in the meantime, so my membership just automatically dropped.

Q. I see.

(Testimony of Morton W. Tompkins.)

A. However, I was elected officially to that position.

Q. I noticed also in the minutes of the bureau for January the 3rd, 1950, that you were named chairman of the building committee of the bureau?

A. No, that is incorrect.

Q. What was that post?

A. At that particular time, the doctors in this area were interested in investigating and perhaps promoting a medical center building. I was elected chairman of that committee to conduct the investigations and we had a number of meetings on that. It was not a function of the bureau, nor was it a function of the medical [1691] society. It was a function of a group of interested doctors, although all of the members did belong, I think, both to the bureau and to the society, because all of us belonged to both at that time.

Q. I see. I believe that Dr. Sam Page was vice president or vice chairman, Dr. Balcom Moore was secretary and treasurer, and Charles Fullerton was business manager; is that correct according to your recollection?

A. I don't recall, but it could be.

Q. Was the building ever carried out?

A. No, the Korean War came along and it folded.

Q. You were present, I believe, at most, if not all, of the conferences at which significant action was taken with respect to Dr. Robinson, were you not?

A. I believe so.

(Testimony of Morton W. Tompkins.)

Q. On August the 29th, 1950, there was the meeting of the bureau at which Dr. Robinson's resignation was accepted. Were you present at that meeting, if you recall?

A. I don't recall that meeting.

Q. Then on October the 11th, 1950, there was the extraordinary meeting of the board of trustees and members of the board of the trustees and grievance committee on the date that the complaint was taken from Tom Brooks. Were you present there?

A. Yes. [1692]

The Court: What mention did you make of the grievance committee in connection with that?

Mr. Sembower: That the meeting among the doctors who were assembled at that meeting to take a statement from Tom Brooks, apparently there were members of the trustees and members of the grievance committee and possibly others. I don't know exactly how it was selected.

The Court: In connection with the Brooks complaint?

Mr. Sembower: Yes.

The Court: I was under the impression that the grievance committee of the local society had never acted, as such, in the Brooks matter.

Mr. Sembower: I think that is true and never acted as such. This meeting——

The Court: What is your basis for your statement, then, that the grievance committee participated in the meeting of October 11th?

Mr. Sembower: What I meant to say was that

(Testimony of Morton W. Tompkins.)

this meeting at which members of the trustees and grievance committee attended.

The Court: Oh, well, yes. Some of the members of the grievance committee were trustees, is that what you mean to say?

Mr. Sembower: Yes, that is correct.

Mr. McNichols: Your Honor, I might make it clear, the [1693] trustees were at that meeting and also the members of the grievance committee were at the meeting with the trustees.

The Court: Do the minutes show that?

Mr. McNichols: Yes, sir.

The Court: I see.

Mr. McNichols: All but Dr. Stevens, who was out of town, I believe.

The Court: Oh.

Q. (By Mr. Sembower): And then there was the meeting on November the 9th, which was the trustees' meeting held after the regular meeting which decided to go ahead with the Brooks complaint. Did you attend that, if you recall?

A. Yes.

Q. And then there was the meeting of November the 20th, 1950, which was called after Dr. Robinson presented the requests of the requisite number of doctors, and they voted 15 to 14 against a motion to abolish the grievance committee. Were you present there? A. Yes.

Q. And then the next night the meeting was held which voted to refer Dr. Robinson's case to the new state grievance committee. Did you attend that?

(Testimony of Morton W. Tompkins.)

A. Mr. Sembower, I believe you have your dates correctly. Would you state that again?

Q. November the 21st. [1694]

A. Would you please state your question again, please?

Q. Well, that was a meeting which was held and it was voted at that meeting to refer Dr. Robinson's case to the state grievance committee?

Mr. Kimball: I don't believe that is correct.

A. That is incorrect. November 21st was the hearing before the board of trustees.

Q. (By Mr. Sembower): What is your recollection of that meeting?

Mr. Kimball: Which one?

Mr. Sembower: Well, of November 21st.

Q. Did you attend a meeting on November 21st?

A. I did.

Q. And what was that meeting, if you recall?

A. That was a meeting of the board of trustees, at which time Mr. Brooks presented his complaint and Dr. Robinson presented his defense. There were other witnesses heard.

Q. Yes. But you were in attendance at that meeting? A. Yes.

Q. Then there was a meeting of December the 13th, which was a meeting of the trustees of the Walla Walla Valley Medical Society which passed the resolution to refer the Robinson matter to the grievance committee of the Washington State Medical Association. Were you present there? [1695]

A. Yes.

(Testimony of Morton W. Tompkins.)

Q. Then there was the annual meeting, I think the next night, December the 14th. Were you present at that meeting? A. Yes.

Q. That was the meeting where Dr. Stevens delivered his speech? A. Yes.

Q. To which he testified a little while ago?

A. Yes.

Q. Do you remember the occasion of Dr. Stevens' speech?

A. Do you mean in the procedure of the business of the evening?

Q. Yes, do you remember him giving a speech?

A. Yes.

Q. Do you remember generally what he said there?

A. No, I don't. It has been refreshed somewhat by, I believe, some evidence presented here, but as far as my memory of what he said at that time, no.

Q. Do you remember what the reaction of the audience was, the members of the society there in attendance, to Dr. Stevens' speech? Was it favorable or unfavorable?

A. I couldn't say. I don't recall that at all, because I believe somebody else, if I am not mistaken, Dr. Robinson, had the floor immediately thereafter. [1696]

Q. Well, I just, of course, was asking you about the reaction to Dr. Stevens' remarks, if you recall?

A. Well, I would have no opportunity to get any reactions other than my own, because it was in the middle of a meeting. If Dr. Robinson—I am sure

(Testimony of Morton W. Tompkins.)

that Dr. Robinson took the floor immediately after Dr. Stevens stopped talking and there would be no chance for any reactions.

The Court: I was just wondering what you mean by reactions? Did they applaud or look pleased?

Mr. Sembower: That's right, that is what I am wondering. It was a very strong speech and I just wondered if there was muttering or any attitude that you noticed there?

A. There was some laughter.

Q. Applause?

A. There was some laughter.

Q. There was laughter? A. Yes.

Q. Was there applause? A. No.

Q. Did anybody besides Dr. Robinson answer the speech, as you recall?

A. I couldn't say for sure.

Q. Then there was a meeting of March 27, '51 of the local [1697] society to approve the grievance committee rules. Did you attend that meeting?

A. Yes.

Q. That was the one which later was held over again, wasn't it? Or, rather, they rescinded the action there about the grievance committee rules?

A. I'm sorry, I don't understand your question.

Q. Well, at that meeting, action was taken with reference to the grievance committee rules, is that correct? A. Yes.

Q. Later, that action was rescinded, is that correct? A. No.

(Testimony of Morton W. Tompkins.)

Q. Well, what happened to that action?

A. The grievance committee rules were adopted at the March 27th meeting.

Q. Yes.

A. But amendments had been made at that meeting.

Q. Amendments were made at the March 27th meeting?

A. Amendments were made at the meeting, so we could not adopt them officially for at least one month. They also had to be approved by the state—well, not an action of the board of trustees, but they had to be approved through the legal counsel of the state association. In fact, all revisions of the local bylaws have to have approval of the state before they are official. [1698]

Q. I see.

A. So we had to submit that entire addition to the bylaws and there were some other additions also to the state for approval.

Q. And these——

A. After which time, then they could become part of our bylaws.

Q. I see. But they were not effective until they were approved by the state?

A. Until they were ruled on by the state.

Q. I see. Then on April the 22nd was the state grievance committee hearing, and did you attend that meeting, if you recall?

A. Yes.

Q. As a matter of fact, in that meeting you

(Testimony of Morton W. Tompkins.)

asked a good many questions, did you not, during the proceedings?

A. It depends on what you call a good many.

Q. Well, did you ask some questions?

A. I asked some, yes.

Q. Did you take an active part in the meeting, do you recall? A. In one of the meetings.

Q. What do you mean one of the meetings? Was there more than one meeting there?

A. Yes, the meeting was divided into two distinct parts. In the morning, the committee considered the complaint [1699] against the local society presented by Dr. Robinson regarding the authenticity, the legality, and so on, of the grievance committee.

Q. Yes.

A. And the afternoon session was devoted entirely to the complaint of Thomas R. Brooks versus Dr. Robinson, two separate meetings held on the same day.

Q. You were president of the local society at this time? A. I was president, yes.

Q. Which one of these meetings did you take an active part in? A. In the second.

Q. Was there a particular reason why you were active in the second and not in the first?

A. I was asked by the chairman of the state grievance committee who would present the case. Because I was president of the society, I assumed that duty.

Q. You mean in the afternoon session?

(Testimony of Morton W. Tompkins.)

A. Yes.

Q. And as a result, you then did present the case?

A. Yes, I proceeded for the calling of witnesses, and so on.

Q. Dr. Tompkins, had the local society taken a position with the state grievance committee as to whether the meeting in the morning should be held at all?

A. No, we hadn't taken any position if you wish to say had [1700] we protested it.

Q. Yes.

A. No, we wrote a letter of protest asking what the complaint was. We got the notice that the meeting was going to be held and that we would have the hearing of Dr. Robinson versus the local society and we had no idea exactly on what point or points. I think the correspondence here confirms that. We didn't realize any charges had been made or any complaints had been made, and we didn't even know the subject of it.

Q. Well, the position of the local society then was that actually this matter had never really been appealed, is that correct?

A. It wasn't a matter of appeal at all. As soon as we had evidence that a complaint had been made, we were perfectly co-operative about it.

Q. Oh, I see.

A. Which was our attitude, I think, all the way through.

(Testimony of Morton W. Tompkins.)

Q. But you hadn't appealed any matter concerning the grievance committee, as such?

A. No.

Q. To the state association? A. No.

Q. But you didn't object to its being considered by the state association? [1701] A. Not a bit.

Q. If it had been appealed? A. Correct.

Q. Did you know that it was Dr. Robinson's position at that time that he also had not appealed it? A. No.

Q. Did you know that at the time the meeting was held? A. No.

Q. Did you subsequently discover that?

A. I discovered that during the process of this procedure in this room.

Q. Then on May 22nd, '51, that was the expulsion meeting of the society, and, of course, you were there? A. Yes.

Q. Did you preside at that session?

A. I did.

Q. Now, around about that time also in May, there appears to have been a meeting of the trustees at the Marcus Whitman at which Dr. Pratt was commissioned to get in touch with Dr. Robinson's father. Did you attend such a meeting as that?

A. I don't recall of any such action as that.

Q. Do you remember any meeting of the trustees held around that date, around May the 22nd or a few days thereafter, at which the matter of Dr. Pratt getting in touch with [1702] Dr. Robinson's father was discussed? A. No.

(Testimony of Morton W. Tompkins.)

Q. Do you remember any meeting that was held unofficially at which that was a topic of conversation?

A. You will have to put a date or approximate date on that.

Q. Well, I don't know the approximate date, I was asking you if such a meeting had been held?

A. My first knowledge that Dr. Pratt had made a contact with any member of the Robinson family, and I did not know to which member, came to my knowledge after the first hearing of the Judicial Council in Los Angeles in December of 1951.

Q. Were you in attendance at the depositions which were taken in the state action, state court action, in '53? I believe your deposition was taken, and let me ask you, were you in attendance when Dr. Carlson's deposition was taken?

A. I don't know.

Q. Do you remember Dr. Carlson stating anything in that deposition relative to such a meeting being held?

A. No. I don't remember any such thing. I wouldn't say that it didn't happen, but I don't remember it.

Q. Well, would you say, Dr. Tompkins, that such a meeting was not held?

A. Well, I attended all of the meetings, almost without [1703] exception, during this entire period of two years. The only time the board of trustees delegated any right or authority to Dr. Pratt was to try to reason with Dr. Robinson personally in

(Testimony of Morton W. Tompkins.)

some way, and this occurred before the hearing of the Thomas R. Brooks case in November of 1950. That is the only time that the board of trustees authorized Dr. Pratt to do anything and I do recall that, but it was primarily in regard to his antagonism toward the grievance committee.

Q. Now, do you remember about the date when that occurred?

A. That would have been before November 21st, 1950, and I do recall that that particular thing came up at that time, but at no time other than that was Dr. Pratt ever given any authority by the board of trustees to do anything other than as a friend.

Q. Was Dr. Pratt in attendance at the meeting you have just mentioned?

A. I believe—not at the November 21st meeting, I don't believe.

Q. Yes, that is what I meant.

A. I don't think so. The record will show.

Q. Was some member of the trustees delegated then to confer with Dr. Pratt and ask him to do something?

A. If I recall correctly, it was a combined meeting. When I say combined meeting, the trustees of the bureau had a [1704] meeting and the board of trustees of the medical society had a meeting immediately following. The members of the bureau board, occasionally some of them stayed and listened in on our meeting. They were not unwelcome. They were not officially members. And I believe Dr. Pratt was present at a meeting under those circumstances.

(Testimony of Morton W. Tompkins.)

Q. Well, then, Dr. Pratt was present when he was delegated, is that correct? A. Yes.

Q. Now, there doesn't seem to be any entry in the minutes relative to that.

A. No, I think it was an unofficial action entirely. We were trying, trying desperately, to potentially cool off what was starting to get to be an extremely hot issue.

Q. What issue was that?

A. That was the grievance committee issue, Dr. Robinson's antagonism toward it.

Q. Well, now, on the unofficial part of it, who were the persons who participated in the unofficial discussion of that matter?

A. I wouldn't say for certain, but I believe it would include—Dr. Pratt may have been a member of the board of trustees, at that time, in 1950. Dr. Page would be there, Dr. Ralston. [1705]

Q. Dr. Yengling, possibly?

A. No. I believe Dr. Pratt was a member of the board of trustees in 1950. The record will show that.

Q. I believe that Dr. Pratt in his deposition mentions that Dr. Yengling spoke to him about that.

A. That is a possibility.

Q. You don't believe that he was at that meeting, though? A. I don't think so.

Q. Now, in that unofficial discussion, the purpose of it was to dissuade Dr. Robinson from pursuing the matter against the grievance committee, is that correct?

A. Not necessarily persuade him to stop the ac-

(Testimony of Morton W. Tompkins.)

tion, we had no particular desire on that, but to cool off the extremely violent remarks that he had started to make.

Q. Was specific reference made to the remarks he was making?

A. Well, this is at the time we were being deluged approximately once a week with a three to six or seven page letter, and I think all of those are in evidence.

Q. And you objected to the language in those letters? A. We objected to the letters.

Q. To the letters. Well, now, why did you object to the letters?

A. Primarily for what they said, the inferences they drew, and the false conclusions that they drew.

Q. Well, now, Dr. Tompkins, how many such letters did you [1706] get altogether of that?

A. I don't know.

Q. You mentioned two or three a week?

A. No, I said approximately one a week.

Q. Oh, I see.

A. I think we have in evidence here that there occurred at least three or four in the month of October and approximately two in the month of November and maybe one in December and another in January, and I think perhaps another one in February. I am not sure of the exact number.

Q. And the members of this unofficial group objected to that schedule of letters?

A. Well, it is—these letters, I think, as you have read them over, would bring out controversial points

(Testimony of Morton W. Tompkins.)

and we knew all those controversial points were going to be ammunition for further discussion in our subsequent medical meeting.

Q. Ammunition for whom?

A. For Dr. Robinson.

Q. Well, then, you objected to his phrasing those things in the letters for subsequent use at the meetings?

A. Let's put it this way, Mr. Sembower: Dr. Robinson would write a letter and he didn't wait until the next meeting to answer his own letter. He assumed what the arguments [1707] would be and then soon he came out with another letter where he was answering what he assumed the objections to his previous letter were, and if we still didn't have a meeting, then another letter would come along, and then we finally would have a meeting and we would have the compilation of all three. We were getting no work done at all in our society meetings and they had changed from an hour or an hour and a half to three and four hours.

Q. Because of the issues raised in these letters?

A. Primarily, but not the issues particularly, but the way in which they were presented and the falacious arguments that were being presented.

Q. Well, did you arrange for any member of the group to answer Dr. Robinson? A. No.

Q. Well, now, Dr. Balcom Moore wrote quite a detailed letter to Dr. Robinson, did he not?

A. That has been presented, yes.

Q. Was that an answer prepared by this group

(Testimony of Morton W. Tompkins.)

or after discussions in the group? A. No.

Q. That was just a letter of Dr. Balcom Moore's, entirely on his own, is that correct?

A. I think that Dr. Moore's letter was written—you can correct me on the date—subsequent to Dr. Robinson's [1708] resignation from the medical bureau, and he wrote as president of the bureau at that time. I believe Dr. Moore perhaps may have written another letter along about this time, and he did it entirely as an individual.

Q. Well, now, the letter of Dr. Robinson relative to his resignation from the bureau was dated, I believe, August the 16th. You received a copy of that letter?

A. I don't know. I was on vacation.

Q. Well, did the members of the society or this group that you referred to, did they resent that letter?

A. No. I don't think anybody resented it.

Q. Did you know that that letter had been shown to Dr. Pratt before it was sent out? A. No.

Q. Did he ever state at any of your meetings that he had said he thought it would be a good idea to send that out? A. No.

The Court: What letter is that, Mr. Sembower?

Mr. Sembower: That was the first letter, your Honor, the one where Dr. Robinson withdrew from the bureau.

The Court: That is Exhibit 8?

Mr. Kimball: August 11th, 1950. He didn't withdraw at that time.

(Testimony of Morton W. Tompkins.)

Mr. Sembower: That's right, he didn't resign.

The Court: That isn't the resignation [1709] letter?

Mr. Sembower: No, I'm sorry.

The Court: That is another "Dear Doctor" letter. Is that the first one?

Mr. Tuttle: Yes, the first one.

Mr. Kimball: That is correct.

The Court: The resignation letter, I think, is 8.

Mr. Kimball: August the 17th.

Q. (By Mr. Sembower): Well, now, to your knowledge, Dr. Tompkins, was Dr. Pratt's getting in touch with Dr. Robinson's father an adventure of his own, then?

A. I know nothing about that at all.

Q. You didn't participate in any discussions leading to that matter?

A. Not in the slightest.

Q. Dr. Tompkins, in a letter from Mr. Rosling to Dr. Cunniffe, Plaintiff's Exhibit 149, Mr. Rosling states that the state society never received notice that Dr. Robinson had been expelled.

Now, do you know of your own knowledge whether such notice was furnished to the state society or not? A. I don't know.

Q. Well, I have a copy of your letter, this is Plaintiff's Exhibit 115, from Morton W. Tompkins to K. L. Partlow, in which you state:

"Please be advised that the membership of [1710] the Walla Walla Valley Medical Society, at the regular meeting held Tuesday, May 22nd, 1951, took

(Testimony of Morton W. Tompkins.)

action in the matter of the complaint of Thomas R. Brooks vs. Miles H. Robinson, M.D. The membership found Dr. Robinson guilty on two counts, unprofessional conduct and revealing privileged information, and upon a vote of 26 to 4 expelled Dr. Robinson from membership. A complete copy of minutes of the meeting will be furnished to you within the next few days."

The Court: Pardon me, what exhibit number is that?

Mr. Sembower: That is No. 115.

The Court: Thank you.

Q. (By Mr. Sembower): Did you send along within a few days the copy of the minutes of the meeting, if you recall?

A. Did I write that letter?

Q. I will show it to you. A. I recall now.

Q. And that would constitute notice, would it not, to the state association?

A. Yes. The minutes of that meeting, I don't believe, were sent for several weeks, but they were sent before the first of September.

Q. Now, in further connection with the state association, Dr. Tompkins, Mr. Fullerton testified yesterday in this [1711] action that he always acted under the authority of those who were officers of the association. Five days after the Brooks complaint was taken down in the extraordinary meeting of October 11, 1950, he wrote a letter to Ralph W. Neill, the executive secretary of the Washington State Medical Association. That is Plaintiff's Ex-

(Testimony of Morton W. Tompkins.)

hibit No. 23 and I will show you this letter and ask you if you have ever seen it before?

A. Yes. I have seen a copy of it.

Q. In what connection have you seen it?

A. In connection with the exhibits in this case.

Q. Well, now, in this letter he states:

“We have a situation within this society here that indicates it will be necessary to use the services of the state grievance committee. Will you, therefore, kindly advise the answers to the following questions * * *”

And he enumerates a series of five questions, and the reply came back a few days later keyed in with that same series of numbers.

Now, did you direct Mr. Fullerton to write this letter seeking information?

A. Not as an individual, I believe it came from the board of trustees, either that or from Dr. Page. I knew that it had been requested. [1712]

Q. You don't remember precisely whether it was the board of trustees or Dr. Page?

A. No, I don't.

Q. Did the other members of the board of trustees know that such a letter had gone forward, to your knowledge?

A. If it were an official action of the board of trustees, they would know. If it were a matter of Dr. Page's request, they might not know until after the answers came back, but they were acquainted with the fact that the information did come back to the board of trustees.

(Testimony of Morton W. Tompkins.)

Q. Dr. Tompkins, there was some testimony by Mr. Fullerton that he had not discussed the matter with Brooks as to whether Brooks intended to sue or not. Did you ask Mr. Fullerton at any time to talk to Tom Brooks and discuss with him the question whether Brooks planned to file suit against Robinson? A. Yes.

Q. On what occasion did you talk to him about that? A. It was after I became president.

Q. And when would that be, about?

A. 14th of December, 1950.

Q. All the way then that late? A. Yes.

Q. You don't remember talking to him at any time prior to that? [1713]

A. I had no authority to, except as a member of the board of trustees.

Q. Where did that discussion take place, if you recall?

A. It was after a meeting at St. Mary's Hospital, approximately 10 o'clock at night, and it was raining.

Q. Was anyone else present? A. No.

Q. Besides the two of you?

A. No, we were the last two to leave the meeting. I am not sure whether it was a medical society meeting or a bureau meeting. I am not sure whether it was in December of '50 or in January of '51.

Q. Well, what did you say to Mr. Fullerton and what did he say to you?

A. I don't know how the subject of the Brooks hearing had come up, unless it was just after the

(Testimony of Morton W. Tompkins.)

board of trustees had referred it to the state grievance committee and we may have had some information back from the state regarding it. He said, "I hope"—this is not exact quotation, but in substance—Mr. Fullerton stated, "I hope Mr. Brooks doesn't"—well, he intimated—"go off half-cocked and sue." And I said, "Would you please contact Mr. Brooks for me and tell him not to sue until we have had ample process or time to process this case?" He said, "I will." Approximately a [1714] month later, in passing, at another meeting or afterward, he says, "I got the word."

After the suit had been filed in Superior Court, Mr. Fullerton again came to me and said, "Is Mr. Brooks released from his promise?" And I said, "Yes."

Q. Then you did, to your knowledge, you had a definite commitment from Brooks as to whether he would sue or not? A. I understood that, yes.

Q. Now, I am concerned only about the time element because I had been under the impression that the conversation must have been much earlier.

A. It couldn't have, because I had to speak in that vein only as president of the society and I did not become president of the society until December 14th.

Q. In your deposition on page seven, the interrogation is concerning the joint meeting of the board of trustees and the grievance committee which was called by Dr. Page on October the 11th, 1950, and

(Testimony of Morton W. Tompkins.)

the interrogatories seem to relate entirely to that element. For instance:

“Q. Did you have any discussion with him aside from the informal meeting after that?

“A. No.

“Q. Did you have any discussion with him at the meeting that would not be of record?

“A. No. [1715]

“Q. Did you ever have a discussion with him concerning his attitude toward suing Dr. Robinson?

“A. Not personally.

“Q. How do you mean, not personally? Did you have any sort of discussion with him? You say not with him, who did you have it with, then?

“A. Mr. Fullerton.”

And there is no regular reference here, I think, to the matter that that discussion took place in December.

A. There is no reference that it took place at any particular time at all.

Q. Well, that may be true. Your definite recollection now is that it was not at the time of the October 11th meeting? A. Yes.

Q. Do you know of your own knowledge whether Dr. Page had any such conversations with Tom Brooks through Mr. Fullerton similar to yours?

A. I don't know.

Q. Did you know of your own knowledge at that time that Brooks intended to sue?

A. He had intimated that he might when he

(Testimony of Morton W. Tompkins.)

gave his original statement of complaint on October 11th.

Q. Do you know whether he had consulted counsel at that time? [1716]

A. I don't know, but I assume from at least the manner in which he spoke that he had not.

Q. Do you know of any cause of action that he possibly could have brought against Dr. Robinson?

Mr. Kimball: If the Court please, I think that is calling for a legal conclusion.

The Court: Yes, I will sustain the objection to that.

Q. (By Mr. Sembower): Now, Dr. Tompkins, with reference to the investigation of the so-called Brooks complaint, you testified that you attended that meeting. Did you know when you went to that meeting that Brooks' daughter had complained against Dr. Robinson about a bill of a dollar and a half?

A. I am not clear of what you mean or which meeting.

Q. I am referring to the meeting of October the 11th, the meeting at which doctors who were members of the board of trustees and the grievance committee convened.

A. Yes.

Q. At the call, I believe, of Dr. Page; was that not correct? A. Yes.

Q. For the consideration of Brooks' complaint, so-called, at which his statement was then taken down? A. And your question?

Q. And the question is, did you know at the

(Testimony of Morton W. Tompkins.)

time you went [1717] to the meeting that Brooks' daughter had filed a complaint against Dr. Robinson a short time previously objecting to a dollar and a half bill?

A. I cannot answer that just exactly the way you have stated it. When I went to the meeting, I knew nothing except I was being called to a special meeting.

Q. Who got in touch with you actually to attend the meeting?

A. I don't know, it was either Mr. Fullerton or Dr. Page. I believe it was Dr. Page.

Q. Was it a personal conversation, as you recall, with Dr. Page?

A. I question that I took the call personally. At that particular time, my office was rather crowded. I had three girls, and one girl tried to take all messages possible. I think I merely received the message to be in the medical service bureau's office at a specific time for an official meeting.

Q. Did you have any idea in advance what the meeting was going to consider? A. No.

Q. Had you had any conversation with Dr. Peter Brooks about the matter before you went to the meeting? A. No.

Q. Well, when you attended the meeting, will you describe to us approximately what took place there? [1718]

A. The doctors were arranged around the room——

Q. This was Dr. Ralston's office, was it?

(Testimony of Morton W. Tompkins.)

A. No, this was in the medical service bureau office.

Q. I see; and that was in the Drumheller Building?

A. The Drumheller Building. We were sitting on chairs and desks. Those present constituted the members of the grievance committee and the board of trustees, the executive secretary of the society, legal counsel, and a court reporter. There was a gentleman sitting over by the door or brought into the door by Mr. Fullerton and introduced as Mr. Tom Brooks. I can't recall whether Mr. Fullerton then carried on and said he had something to say or whether Dr. Page took over and said, "Mr. Brooks has a story he wishes to tell you."

Mr. Brooks sat down by one of the tables, the court reporter was opposite him, and we listened. At the end of his dissertation, the counsel asked two or three questions to clarify his identity or some such thing as that, and that was all. The meeting adjourned.

Q. Had any such meeting as this kind in your experience been held by the members of the society?

A. No.

Q. Was any explanation given by Dr. Page as to why this extraordinary meeting was being held?

A. At that time? [1719]

Q. Yes?

A. To my memory, and I think that it will probably show in the transcript, "A complaint has been made of a sufficiently serious nature to warrant your hearing it in person."

(Testimony of Morton W. Tompkins.)

Now, I am not sure of the exact words but I am sure the content of that type of thing shows in the first part of the Brooks complaint. That is the only statement that was made, no explanation.

Q. Who made that statement, if you recall?

A. I believe Dr. Page, but I would not say for certain.

Q. Well, you did at this time have a grievance committee, did you not? A. Yes.

Q. Did you know of its existence? A. Yes.

Q. Did you know who the members of it were?

A. I am not sure. I think the members of the grievance committee came out before the society membership on September 26th.

Q. And that, you would say, is the first knowledge that you had of the membership of the grievance committee, September 26th? A. Yes.

The Court: Of 1950, did you say? [1720]

A. 1950.

Q. (By Mr. Sembower): And prior to that, did you know how the grievance committee was constituted? A. No.

Q. Did you participate in any of the discussions at the time of the creation of this committee, whether it should be secret or not? A. No.

Q. Well, did anyone at this meeting make the suggestion that this was a matter which should be considered by the grievance committee, as such?

A. The local grievance committee?

Q. Yes. A. No.

Q. Did anyone voice the feeling that it was a strange thing for the trustees and the grievance

(Testimony of Morton W. Tompkins.)

committee members to come together here and hear this particular complaint? A. I don't recall.

Q. Did you gather from the expressions made at that meeting that this was the manner in which you were going to handle all grievances that came in?

A. No, my impression subsequently—of course, prior to the meeting I had no impressions—my impression subsequently, and I think it became obvious as the meeting [1721] progressed, that the reason the grievance committee and the board of trustees was there was to determine into which category the complaint might fall, whether the complaint was of such a nature that it would be in the jurisdiction of the grievance committee, so-called, minor complaint, or if it involved ethics, then it would be in the jurisdiction of the board of trustees, and I believe that the reason for the joint meeting was we knew nothing about the complaint. I cannot say for sure as to what Dr. Page's reason was, but that is the type of reasoning that I have applied to the membership as I saw them.

Q. And this is the rationale you placed on it later on as you looked back on it? A. Yes.

The Court: Time for recess, court will recess for ten minutes.

(Whereupon, a short recess was taken.)

Q. (By Mr. Sembower): Dr. Tompkins, at the meeting of October the 11th, at which Mr. Brooks was present, did you at that time doubt that Dr.

(Testimony of Morton W. Tompkins.)

Robinson's diagnosis of the disease in the Brooks family was accurate?

A. Didn't even think about it.

Q. Didn't form any opinion concerning that at all? A. No, not a bit. [1722]

Q. Did you later on discover or learn that those diagnoses were corroborated by Dr. Peter Brooks?

A. I believe they were only partially corroborated.

Q. Well, we will have to let the testimony speak for that. But it was your impression, then it was your information later, they were only partially corroborated, is that correct? A. Yes.

Q. You could be in error on that?

A. It is possible.

Q. Did you know at the time of that meeting that Tom Brooks had refused to do anything about the condition that had been discovered, that is, his disease that had been discovered? A. No.

Q. Did you know at that time that Mr. Edwards, who was Brooks' son-in-law, had not been told that his father-in-law had this disease, that is, by the name of the disease? Did you know that?

A. Would you repeat the question, please?

Q. Did you know at the time of the hearing that Mr. Edwards, Brooks' son-in-law, had not been in fact informed that his father-in-law had syphilis?

A. I don't know.

Q. Now, if you had known those various things—we will [1723] assume their truth were established—would that have changed your attitude at

(Testimony of Morton W. Tompkins.)

that meeting concerning the Brooks complaint?

A. I don't believe I had an attitude at that meeting.

Q. Well, what action did the meeting take?

A. None.

Q. Now, explain that.

A. Just that, they took no action at all.

The Court: You are speaking now of the October 11th meeting?

Mr. Sembower: Yes, October 11th meeting.

The Court: At which Mr. Brooks' complaint was heard and taken down by a reporter?

Mr. Sembower: Yes.

The Court: All right.

Q. (By Mr. Sembower): Dr. Tompkins, to refresh your recollection, I have a transcript here of the hearing which was held before the grievance committee of the Washington State Medical Association, in which the chairman said to Dr. Tompkins: "Did you investigate the tests of both?" And did you not on that occasion state: "I have the statement of Dr. Brooks both were positive"? A. Yes.

Q. Well, what was the product of the meeting at which Brooks attended? [1724]

A. Which meeting?

Q. On October 11th?

A. What do you mean?

Q. Well, when you went away from there, what was to happen next?

A. We were to wait for the transcript.

Q. Well, now, were you completely tentative about it at this time or—— A. Yes.

(Testimony of Morton W. Tompkins.)

Q. And now, I have here, Dr. Tompkins, Plaintiff's Exhibit 37, which is a photostatic copy of a letter from Dr. Miles H. Robinson to the board of trustees of the Walla Walla Valley Medical Society, dated November 7th, in which he states:

"According to the procedure established by the constitution and bylaws of our society, I submit to you herewith my formal complaint against the unknown members of our secret grievance committee and C. E. Fullerton, responsible for the injurious letter which Fullerton sent to the father, Noel Edwards, of my patient, Noeline Edwards, on September 30, 1950."

I ask you if you remember receiving a copy of that letter? A. Yes. [1725]

Q. Is that one of the letters to which you were referring a little while ago that Dr. Robinson sent out periodically?

A. No, this was a specific letter, different subject. Same subject, but this was his specific complaint against the grievance committee.

Q. I see. I ask you if you recall when you received that letter? The date on it is November the 7th.

A. To my memory, it was received in the morning mail on the 11th of November.

Q. Why do you remember that so precisely?

A. Mr. Fullerton and I were going over the various material at one time and we had the time of receipt of the various documents stamped on the document. I recall the time stamped on Miss Curts'

(Testimony of Morton W. Tompkins.)

copy of Mr. Brooks' complaint was stamped at 9 a.m. and the letter from Dr. Robinson was stamped 10 or 10:30 a.m.

Q. Well, now, what was the date on that manuscript of Miss Curts' and the time?

A. I believe it was either November 9th or 11th. I am not sure.

Q. Was it a complete transcript of the hearing?

A. It was a transcript——

Q. I mean, of the statement, so-called?

A. Of the statement made October 11th. [1726]

Q. Was that an original? A. Yes.

Q. That you saw there? A. Yes.

Q. Where did you see that?

A. I believe it was the material presented before the board of trustees at one of our meetings.

Q. I mean, where did you see the date stamp and time stamp on it?

A. On the copies that were supplied to the board of trustees at the time we had a meeting to act on it.

Q. Well, I don't see quite the connection of how you compare that with the date that you noticed on this. Your recollection is this was the 11th. Were you and Mr. Fullerton together when you observed these date stamps, if you recall?

A. Well, the entire board of trustees was present.

Q. At what meeting was that, if you recall?

A. It would be the meeting of the board of trustees where we received the complaint from Thomas R. Brooks, at which time we set up the time of the

(Testimony of Morton W. Tompkins.)

hearing which was to be held on November 21st. The minutes would show the exact date.

Q. Well, now, I have before me the minutes of a special meeting of the board of trustees and that is November the [1727] 9th.

A. Then, it would be on November 9th that these were received.

Q. Well, then, your recollection was faulty concerning the date of the receipt of this letter, is that correct?

A. My recollection was not definite on the 9th or the 11th. I knew it was one of the two days, but I wasn't sure. With your reminder, it was the 9th, because it occurred on the same day.

Q. And you had at that time also this transcript of Miss Curts'?

A. Yes.

Q. Had it been signed by Brooks at that time?

A. Yes.

Q. And it bore the date stamp and time stamp on it?

A. Yes.

Q. We have that as an exhibit, we might look at it.

While we are looking for that, the time that you remarked the fact that these were date-stamped the same date, were you then at the meeting that was held at that time?

A. Would you restate that, please?

Q. You recall seeing these two things together date-stamped the same time, is that right?

A. Yes. [1728]

Q. Then was that at the place of the meeting?

A. Yes.

Q. That was held in the evening, it seems to have

(Testimony of Morton W. Tompkins.)

and Mr. Fullerton had brought these over from his office, had he? A. Yes.

Q. I wanted to ask you about that meeting of November the 9th. Do you remember anything special about that meeting other than just the order of business, being this complaint?

A. I think the minutes will show what occurred.

Q. Well, the minutes are quite brief. What I am particularly interested in are the persons who attended. Do you remember anything unusual about that?

A. If I recall testimony that has taken place here——

Q. Well, I really don't want to ask your recollection of the testimony here; I would like to have your independent recollection, if you can?

A. I don't know.

Q. Well, I will show you the minutes, which show that the members of the trustees present were four, Page, Tompkins, Keyes and Ralston. The others present were Lyman, Stevens, Kimball and Fullerton.

Mr. Rosling: And Johannesson.

Mr. Sembower: And Johannesson. [1729]

Q. Now, I would like to ask you why you recall the nonmembers of the trustees were present?

A. Anyone was welcome to our board of trustees meetings. Why they were, I do not know.

Q. Is there anything significant to the fact that Lyman and Stevens were on the grievance committee? A. I don't know.

(Testimony of Morton W. Tompkins.)

The Court: What meeting is this we are discussing now?

Mr. Sembower: This is the meeting of the board of trustees held on the night of November the 9th, 1950, at 9:15 p.m.

Mr. McNichols: Special meeting.

Mr. Sembower: Special meeting, yes.

Q. Well, do you think, Dr. Tompkins, that perhaps Doctors Stevens and Lyman and Johannesson and Judd Kimball just dropped by?

A. It is very possible that Dr. Johannesson, Dr. Stevens and Dr. Lyman may have been talking there and the meeting was called to order and they sat down. I don't know.

Q. I have here now, Dr. Tompkins, the Brooks statement, which is our Plaintiff's Exhibit 18, and ask you if you have seen that before? You will notice, if you will leaf it over, it bears the signature of Mr. Brooks. [1730]

Mr. Kimball: Are you speaking of that copy, counsel?

Mr. Sembower: Well, I am asking if he has seen this copy. I will ask him if he has seen another one.

A. Well, I don't know whether I have seen this copy or not. I have seen a copy which is purported to be the same.

Q. Now, you mentioned that there was a date stamp on it. Do you perceive any date stamp on that? A. Not on this copy.

Q. Do you feel this is a different copy from the

(Testimony of Morton W. Tompkins.)

one you saw? A. Yes, it was.

Q. What became of the one that you saw, if you know? A. I have no idea.

Q. Was there more than one copy?

A. Yes.

Q. And did they all bear the signature of Brooks? A. I don't know.

Q. Now, was the time of this meeting conditioned at all by when the manuscript, when the transcript, would be available? A. Yes.

Q. How do you mean?

A. Until the transcript was available, we did nothing. As soon as it became available, we had a meeting.

Q. Did Mr. Fullerton make any explanation about the [1731] transcript, any delays about it, or anything of that kind?

A. I don't know whether it was Mr. Fullerton or not.

Q. Well, did somebody? A. Yes.

Q. Who did? If you don't recall, what was said, however?

A. The transcript was unduly delayed so far as we were concerned because Miss Curts was involved in a court session and did not have time to transcribe this.

Q. And was any explanation made about her staying up until 5 o'clock in the morning to make the transcript that morning?

A. No, I have never heard that before.

(Testimony of Morton W. Tompkins.)

Q. Any other explanation about any circumstances about it at all? A. No. [1732]

* * *

Q. Now, Dr. Tompkins, you mentioned that when you went to the meeting, Mr. Fullerton had in his possession the date-stamped copy of this letter to the board of trustees of Dr. Robinson's, which is Plaintiff's Exhibit 37, the one we mentioned a moment ago? A. Yes.

Q. And you said constituted a complaint?

A. Yes. [1733]

Q. Now, there must have been discussion of this letter, was there not? A. Yes.

Q. What was that discussion?

A. I don't recall specifically, but we discussed it and sort of put up our hands and said, "What can we do about it?"

Q. Well, what did you mean by, "What can we do about it?"

A. We felt at the time of the first discussion that there was little or no merit to the problem.

Q. And you felt there was no merit to this?

A. Correct.

Q. Was there an expression at that meeting that there was no merit? A. Not official.

Q. An unofficial expression?

A. I said not official.

Q. There was, then, an unofficial expression?

A. Yes.

Q. Well, now, who participated in that unof-

(Testimony of Morton W. Tompkins.)

ficial expression? A. The board of trustees.

Q. Well, did you take some actions officially and some unofficially?

A. When you say an unofficial expression of opinion, in the matter of discussion we may talk something over and not [1734] come to a specific conclusion, not sufficient to take a specific action and report it in the minutes.

Q. How long did this meeting last, Dr. Tompkins, if you recall? A. I have no idea.

Q. Isn't it a fact that that meeting lasted about fifteen minutes? A. I question that.

Q. It was held after the regular meeting, wasn't it? A. Yes.

Q. And then after the members of the trustees had met, they then dispersed, is that correct, or did they stay around and talk a little while?

A. I don't know.

Q. You don't remember at what part of the meeting this unofficial discussion took place?

A. It was during the consideration of the complaint.

Q. Well, now, you testified a little while ago that there was considerable irritation about the letters that had been written by Dr. Robinson from time to time. Was there not in fact irritation evinced at this meeting over this letter here? A. No.

Q. They thought this was perfectly all right?

A. It was within his rights. [1735]

Q. And then after you considered the letter, then

(Testimony of Morton W. Tompkins.)

did you pass on to the matter of calling this meeting to set the Brooks complaint for hearing?

A. I am not sure which action took place first.

Q. You said that anyone could have attended that meeting. Could Dr. Robinson have attended the meeting?

A. If he had walked in, he could have.

Q. Had anyone, to your knowledge, made an attempt to talk to Dr. Robinson about the matter which had been discussed originally in the meeting on October the 11th? A. I don't think so.

Q. Was any comment made at the meeting, officially or unofficially, about that?

A. Which meeting?

Q. The meeting that you are now attending on the 9th.

A. Would you state that again, I don't quite get your meaning.

Q. Well, was there any comment made at that meeting about whether anyone had talked to Dr. Robinson or there had been any friendly discussions or anything of that kind apprising him of the Brooks complaint which had been filed, first discussed on the 11th? A. I don't think so.

Q. When did you first see Tom Brooks, Dr. Tompkins?

A. At the meeting of October the 11th. [1736]

Q. Had you ever seen him before?

A. Not to my knowledge.

Q. Did you learn at that meeting that he was an investigator for an insurance company?

(Testimony of Morton W. Tompkins.)

A. I learned that only today.

Q. Is there a possibility that he might have talked to you earlier than that date about an insurance case in connection with an investigation?

A. I don't know.

Q. There is a possibility?

A. I don't know.

Q. Had you ever seen Mr. Brooks around town?

A. If I did, I didn't know who he was.

Q. Do you belong to the Chamber of Commerce?

A. Yes.

Q. Had you seen him at any of the meetings of the Chamber of Commerce?

A. I have been in one Chamber of Commerce meeting since I joined approximately ten or twelve years ago.

Q. I was going to ask you next if you belonged to the Episcopal Church? A. No.

Q. What about the Masonic Lodge 13, do you by any chance belong to that?

A. Yes, I do. [1737]

Q. Had you seen him at any of those meetings?

A. I believe I saw him at the one meeting of the Blue Lodge that I attended approximately two years ago, but again I am a very poor meeting attendee at the present time.

Q. Dr. Tompkins, at this time how well did you know Dr. Robinson?

A. Only very casually.

Q. Had you been associated with him at all in connection with the practice of medicine? Your

(Testimony of Morton W. Tompkins.)

practice and his? A. One on occasion only.

Q. Was that a major matter or a minor matter?

A. It was a telephone conversation entirely.

Q. Had you had any social contacts with him that you recall? A. Not to my memory.

Q. Had you been in his home or had he been in your home? A. No.

Q. Had you gotten to know Dr. Robinson in connection with society and bureau activity?

A. After September 26th, 1950, yes.

Q. That was in connection with this matter?

A. Yes.

Q. But not prior to that? A. No.

Q. You received a copy of his letter of August 11th, 1950, [1738] which purported to be a rather lengthy, carefully drawn, carefully written, thoughtful criticism of the bureau, did you not?

A. I assume I did.

Q. Did you read it? A. No.

Q. What did you do with it?

A. I was on a vacation, I probably filed it in the wastebasket when I got home.

Q. Never read it at all?

A. Don't recall ever having seen that letter.

Q. Did you hear from anyone else that he had sent out such a letter around about this time? I assume you have heard a lot about it since.

A. I think that is the only time that I have heard about it, is since.

Q. I assume you didn't see Dr. Balcom Moore's answer to this letter, then? A. No.

(Testimony of Morton W. Tompkins.)

Q. What other bases, if any, of knowledge concerning Dr. Robinson prior to this date of October 11th did you have?

A. Would you state that again?

Q. What other bases of knowledge, what other knowledge did you have concerning Dr. Robinson, if any, prior to this date of October 11th, other than the things we have just [1739] covered?

A. I am not sure exactly what you mean.

Q. Well, I just wondered if you knew him by reputation?

A. You mean professionally, socially?

Q. Yes, professionally and socially and any other way?

A. I had heard that he maintained a rather extensive laboratory. I had heard that one of the major portions of his mode of treatment was diet. I had heard, I think, at this time, although I am not sure about this point, that he had been ill. And that is just about all.

Q. Had you heard anything about what the nature of his illness was?

A. Only in that he had a nervous breakdown.

Q. You had heard that?

A. I am not sure whether it was at this time or shortly thereafter. I couldn't put a specific time on that particular statement because that came to my knowledge at approximately this area.

Q. Do you remember where you heard that?

A. No, I don't.

Q. Just rumor, so to speak?

(Testimony of Morton W. Tompkins.)

A. Rumor in this respect, stated to me by a doctor.

Q. Well, now, do you remember who the doctor was? A. No, I don't.

Q. But you do remember it was a doctor? [1740]

A. Yes.

Q. You don't, however, remember exactly where you heard it? A. No, I don't know.

Q. Did he tell you any details about this purported nervous breakdown?

A. No. No, it was—to the limit of my memory on that particular point, there was a very casual remark that was made. I think it came after September 26th. Prior to September 26th, I don't know.

Q. Could it have been at one of these trustees' meetings, so-called? A. I doubt it.

Q. Well, now, as to the grievance committee of the local society, Dr. Tompkins, its rules and regulations were not approved until May the 22nd, 1951, were they? A. Right.

Q. Prior to that time, it was just getting along as best it could without rules and regulations?

A. I believe it would be better to say they were not getting along, period.

Q. I think you testified a little while ago that these rules were finally approved. Were they approved by the society at the March meeting? Was that March 29th?

Mr. McNichols: 27th.

Mr. Sembower: 27th meeting? [1741]

A. Yes.

(Testimony of Morton W. Tompkins.)

Q. And then they were sent on to the state and approved there and came back? A. Yes.

Q. This was 1951?

A. Yes. Wait a minute—yes, '51.

Q. Does the grievance committee exist today, Dr. Tompkins? A. Yes.

Q. Have they heard any cases recently?

A. I don't know.

Q. I think you testified in your deposition last fall, you stated: "I know that they did hear a case last year." A. You said recently.

Q. Does that refresh your recollection?

A. Would you specify "recently"?

Q. Yes——

The Court: He is asking you to specify what you mean by recently.

Mr. Sembower: Yes, I'm sorry. I thought recently might be within the last year.

A. I heard that they had a hearing on a complaint which subsequently came to suit during the year 1955.

Q. Is it any longer a secret committee?

A. No.

Q. Now, that approval of the rules and regulations of the [1742] grievance committee on May 22nd, 1951, was at the very same meeting, was it not, that Dr. Robinson was expelled?

A. Yes.

Q. You were president at that time?

A. Yes.

(Testimony of Morton W. Tompkins.)

Q. Who, by the way, set up the agenda for that meeting? A. I did.

Q. In the minutes, Dr. Tompkins, it occupies more than twenty pages, I believe, the minutes for that meeting alone? A. Yes.

Q. And it seems to have been the longest meeting on record of the society, is that correct, to your knowledge?

A. I believe there were other meetings which may have let out later, but I believe that it was a result of a double meeting of the bureau and the society.

Q. The meeting started, I believe, for the bureau around about 6:30, is that correct?

A. I believe usually at 7 or 7:30.

Q. What time did Dr. Robinson's matter come on, if you recall? A. Perhaps 9 o'clock.

Q. And how long did it last, about?

A. From two to two and a half hours. [1743]

Q. Was there any special reason why this was such a full agenda on this meeting this night?

A. Part of it was the fact that the grievance committee reports had come back from the state committee on two matters; part of it was due to the fact that the state had submitted the approval of the rather extensive rules and regulations for the grievance committee and other changes in the by-laws. Both of those required more than the normal amount of time, and the Robinson matter and Brooks versus Robinson matter itself required considerable time.

(Testimony of Morton W. Tompkins.)

Q. Did someone arrange for the attendance there of Mr. Edwards and Mr. Brooks at that hearing?

A. Mr. Edwards.

Q. No one arranged for Mr. Brooks to attend?

A. No.

Q. You were here this morning and heard Mr. Brooks' testimony, did you not? A. Yes.

Q. Did that refresh your recollection that he was not sent for? A. Yes.

Q. Is it possible that you otherwise would have been under the impression that he had been sent for, along with Mr. Edwards? [1744]

A. No, I don't think so.

Q. Did you notify Dr. Robinson that he might present witnesses and testimony at this meeting?

A. Not specifically.

Q. Was it your plan to present Mr. Edwards as a witness at this meeting?

A. Only if the society wanted that evidence.

Q. And the society decided not to hear that evidence, is that correct?

A. We decided to hear it.

Q. And Mr. Edwards did testify then?

A. Yes.

Q. But Mr. Brooks did not? A. Correct.

Q. Did you see Mr. Brooks there?

A. No.

Q. At any time, Dr. Tompkins, was it necessary to amend the constitution and bylaws of the local society to provide for a grievance committee?

(Testimony of Morton W. Tompkins.)

A. And for inclusion of specific rules and regulations.

Q. Well, then was the amendment undertaken?

A. Finally we got it adopted May 22nd, 1951.

Q. Well, was that an amendment to the constitution and bylaws, that action?

A. It was an inclusion in the bylaws. [1745]

Q. Was the constitution ever amended?

A. No.

Q. Did you consider it necessary to amend the constitution in this connection? A. No.

Q. In your deposition, I believe that you state there that the local rules of the grievance committee were milder than the state rules. Do you remember making any statement of that kind?

A. Not specifically.

Q. Well——

A. I believe it referred perhaps to the rules that were presented by the grievance committee which we amended.

Q. I see. Well, what was that comparison that you made along that line?

A. The original rules and regulations for the grievance committee set up rather stringent powers and procedures and there were many members of the society who thought they were too stringent, so much so that an attempt was made to modify them at the December 14th meeting, 1950, but it was impossible to do so. So finally the suggestion was made that every member was to be circularized and send in his own suggestions and corrections. Then those

(Testimony of Morton W. Tompkins.)

were compiled, modified, and re-presented at the March 27 meeting. There were many attempts to set up a set of [1746] rules and regulations for the grievance committee. I believe Dr. Stevens had a very simple set of rules and regulations tentatively working before Dr. Robinson presented his complaint and that exploded the whole thing.

Q. Just one or two more questions with reference to that March 27th meeting before we leave it. I found in your deposition, Dr. Tompkins, that you had stated that the meeting was held on March 27th and you stated:

“We could have continued with the others technically, but we declared them null and void. We called a meeting by telephone and the girls called the meeting and Dr. Robinson was not notified of that meeting, and because of that one point, we revised and re-revised them. We did not have a grievance committee functioning at that time.”

Do you recall making that statement?

A. Yes.

Q. Then, in fact, you did have to pass upon these new rules and regulations on another occasion before they went to the state committee, is that not correct?

A. No, we had to pass on them at any time, but they could go to the state committee in the meantime.

Q. Oh, I see, you forwarded the draft to the state [1747] committee then?

A. Yes.

(Testimony of Morton W. Tompkins.)

Q. And then presented them for approval at a later time.

You also stated in your deposition—well, you stated at the state grievance committee hearing, the transcript there of the hearing of the meeting of April 22nd, page 13, you said:

“We junked everything we had,”
referring to the rules,

“and made a complete new set and referred them back for suggestions and corrections that anyone might make. They came in and were again revised. They were presented to the society and adopted, presented to you gentlemen, and re-presented to the society. We were leaning over backwards because of the rules and regulations we had before.”

Do you recall making that statement?

A. Yes.

Q. Now, to what did you refer when you said, “We were leaning over backwards because of the rules and regulations we had before”?

A. The rules and regulations that Dr. Stevens had suggested had not been officially adopted, and then a group was presented and I don't know whether they were officially [1748] adopted at any time or not. But there were many objections to them by the members.

Q. By members other than Dr. Robinson?

A. Yes.

Q. And that was evinced at the meeting on November the 20th, perhaps? A. Yes.

Q. Where the society was only 15 to 14 in favor

(Testimony of Morton W. Tompkins.)

of the grievance committee? A. That's right.

Q. In your deposition, the question was:

"Q. In setting up your grievance committee, did you attempt to conform to the requirements and suggestions of the state association and the AMA?"

And you stated:

"They didn't have any yet."

Do you recall that testimony? A. Yes.

Q. Do you recall when the state did supply rules and regulations that were afterward a guide?

A. Approximately two months after we had approval of our local rules and regulations from the state.

Q. And do you remember anything about the AMA providing any rules as a guidepost? [1749]

A. I don't know if they ever have or not. I can't say.

Q. And then you said, in the same deposition the question was asked:

"Q. During the interim, the grievance committee pretty well acted on their own, is that right?"

And you answered:

"A. Well, they just stopped acting. I think they settled two or three cases. When Dr. Robinson's case came up, their action stopped. There were no actions after that."

Do you recall that? A. Yes.

Q. Now, is it a fact, Dr. Tompkins, that Dr. Robinson's activities, whatever they were, actually stopped the clock so far as the grievance committee was concerned? A. Yes.

(Testimony of Morton W. Tompkins.)

Q. Well, in what manner did he stop the functioning of the grievance committee?

A. I don't know whether the grievance committee was afraid to act or not or whether they didn't have any cases to come up, but they wrote a letter trying to settle a complaint, which they considered minor, the rest of us considered minor, and Dr. Robinson made a tremendous issue of that point, tried to destroy the whole idea of [1750] a grievance committee, maintained that they had no right to even ask him about his patients. That created some rather marked controversial subjects.

Q. Well, now, is that your construction of the position Dr. Robinson was taking, that he opposed the idea of a grievance committee that would look into any of the activities of the doctors?

A. No, Dr. Robinson has so stated.

Q. That is, of course, your assumption, isn't it? You are just very certain he stated that?

A. Dr. Robinson has made the statement at the meeting of November 26th, 1950: "This grievance committee has no right in any way to come between me and my patient," and those are practically verbatim words.

Q. Well, now, at what meeting was that statement made? A. September 26, 1950.

Q. And that meeting had occurred just a few days before this November 9th meeting? That was a special meeting of the trustees, is that correct?

A. Approximately six weeks before.

Q. Not six weeks?

(Testimony of Morton W. Tompkins.)

A. September 26th to November 9th.

Q. Well, that was also just about four days before the letter was sent out to the Edwards, was it not, telling them not to pay the bill? [1751]

A. Yes.

Q. Isn't it a fact, Dr. Tompkins, that Dr. Robinson was not challenging the grievance committee as a function to do anything, but that he was insisting upon its being constituted according to the constitution and set of rules and regulations?

A. No.

Q. You had the impression that was not his contention at all? A. At that time, it was not.

Q. And wasn't it also that he was contending that it shouldn't be a secret committee?

A. Yes.

Q. That was a matter that was raised?

A. Yes.

Q. And it was a fact at this time that the committee had no rules and regulations to guide it, is that not correct?

A. I won't say they had no rules and regulations.

Q. Where were those rules and regulations?

A. I don't know.

Q. Did you ever see them? A. No.

Q. Did you ever discuss the functioning of the grievance committee with Dr. Stevens? [1752]

A. I don't know, I assume yes.

Q. Would it have made a difference in your attitude toward Dr. Robinson's complaint about this

(Testimony of Morton W. Tompkins.)

committee if you had known that the first Dr. Robinson knew of the existence of the committee was Stevens' addressing him on the street?

A. Dr. Robinson told us that.

Q. And that didn't change your attitude?

A. No.

Q. Or, as a matter of fact, Dr. Tompkins, the committee had really never had a meeting, had it, up to this time?

A. At that time, I did not know it.

Q. You did not know that at that time?

A. No.

Q. Might that have had an effect upon your attitude toward this matter?

A. Toward which matter?

Q. I mean toward the complaints being raised by Dr. Robinson about the functioning of the grievance committee?

A. It did influence me at the time we considered his complaints before the board of trustees.

Q. How do you mean it influenced you?

A. I considered that very definitely.

Q. And then disregarded it, is that correct?

A. Yes.

Q. Now, Dr. Tompkins, with reference to the motion, to the application, or whatever it was, for a rehearing of the Robinson appeal in Los Angeles—perhaps I had better take it up in order and ask you about the Los Angeles hearing at which Dr. Robinson's appeal to the Judicial Council was considered. Did you attend that meeting?

A. Yes.

(Testimony of Morton W. Tompkins.)

Q. I believe the date was December 2nd, was it not? A. Yes.

Q. Do you recall who was present there?

A. Dr. Robinson, Dr. Cuniffe, Dr. Benson, Dr. Page, myself, I think Ross Wright, and the rest I do not know.

Q. I believe that after the meeting was over that one of the major bases for your suggestion that a rehearing be held by the AMA was that you stated you had a very short notice of its being held, is that correct? A. Correct.

Q. Do you know that Dr. Robinson's appeal to the Judicial Council went in, I believe, on June the 9th prior to that?

A. I have learned that only since this proceeding started.

Q. Had no information reached the society at all from the AMA headquarters concerning the pendency of this appeal? [1754] A. None.

Q. To your knowledge, had any information reached the state society?

A. To my knowledge, no.

Q. If the state society had received such information, do you feel sure that it would have reached you?

Mr. Kimball: How would the witness possibly know that?

Mr. Sembower: Well, he may know.

The Court: I don't know, I think I will sustain the objection to that.

Mr. Sembower: All right.

(Testimony of Morton W. Tompkins.)

Q. Well, now, Dr. Tompkins, at the hearing in Los Angeles, was any objection made by you or your associates from Walla Walla and Washington State Medical Association, any objection made on the basis of notice? A. The basis of what?

Q. On the basis of the length of notice?

A. I don't know if you would call it a specific objection or not. We prefaced our remarks by saying—I did—saying that I had heard of this appeal for the first time on the previous Wednesday night. This was Sunday morning. I had had no opportunity whatever to even examine the material until 11:30 the preceding night. "So that we do not know what your procedures are nor [1755] what materials you will want. If you will bear with us, we will try to supply them to you."

Now, that was the opening statement made by the representatives of the local society.

Q. And then you did go ahead and participate in the proceedings? A. Such as it was.

Q. And you presented argument on behalf of the finding which had been made here by the Walla Walla society, did you not? A. We tried.

Q. Well, now, that hearing in Los Angeles was directed toward hearing the facts and the so-called law and procedure, or both?

A. Supposedly just procedure.

Q. So you didn't have to present any witnesses?

A. No.

Q. And then did you present the argument on the procedure? A. We tried to.

(Testimony of Morton W. Tompkins.)

Q. And you didn't in any sense withdraw from the proceeding, is that correct? A. No.

Q. You say you tried to present it. You were familiar, thoroughly familiar, with the steps that had been taken, were you not? [1756]

A. Yes.

Q. And you had an opportunity, did you, before the council to outline those steps? A. No.

Q. What opportunity did you lack?

A. The chairman of the Judicial Council, as soon as grievance committee was mentioned, pursued the idea that the expulsion had come as the result of action of the grievance committee, and at no time were we allowed or permitted to present evidence that the grievance committee action on the Edwards case and the action on the Brooks case which led to expulsion were completely two separate and distinct operations so far as the local society was concerned.

Q. Well, now, you say evidence, you really mean argument, I assume? A. Pardon?

Q. I say you used the word "evidence"; I assume that you mean argument? A. Yes.

Q. Because they were not taking testimony, were they? A. Evidence of procedure.

Q. Well, we won't labor that. But you made no objection at the end of the proceeding, did you?

A. We made objections all the time until they shouted us [1757] down.

Q. Shouted you down?

(Testimony of Morton W. Tompkins.)

A. Certainly. Dr. Robinson was ready to crawl across the table at me, he got so angry.

Q. Well, the proceeding was under——

A. Was chaos.

Q. Was a record kept of this proceeding?

A. No.

Q. Did you ask that a record be kept?

A. No.

Q. Well, then, what did you do after the proceeding was over? A. Came home.

Q. And what did you do after that?

A. Waited.

Q. And what was the next thing that happened?

A. We got a telegram approximately February 1st.

Q. And how did you regard that telegram, Dr. Tompkins? A. We were bewildered.

Q. Well, now, the statement in the telegram is perfectly clear, is it not? A. No.

Q. Did you question the authenticity of this telegram? A. No.

Q. I have here, Dr. Tompkins, Plaintiff's Exhibit 157 and [1758] this happens to be the copy addressed to Dr. Miles H. Robinson. I will ask you if you received one like it. It states:

“The appeal to the Judicial Council of the American Medical Association of Dr. Miles H. Robinson, Walla Walla, Washington, from the decision of the Washington State Medical Association by which Dr. Robinson was expelled from membership in the Washington State Medical Association and the

(Testimony of Morton W. Tompkins.)

Walla Walla County Medical Society is sustained by the Judicial Council and the decisions of the constituent and component societies in this matter are reversed.

“EDWARD R. CUNNIFFE,
M.D.

“Chairman, Judicial Council,
American Medical Assn.”

And it comes from Chicago. I ask you, did you receive a copy, a similar telegram?

A. Did I personally?

Q. Well, did the society? A. Yes.

Q. Or any of its duly constituted officers?

A. Yes.

Q. All right, and what did you do with the telegram then? A. We talked about it. [1759]

Q. Who talked about it?

A. The board of trustees.

Q. And where did they talk about it and when, approximately?

A. Perhaps from the day they got it until the end of March.

Q. Well, did you have a meeting? A. Yes.

Q. Well, now, was that an unofficial meeting or an official meeting?

A. It was an official meeting.

Q. And what was the decision reached by the trustees?

A. It was tabled until we received further information from the Judicial Council.

(Testimony of Morton W. Tompkins.)

Q. Did you have any reason to expect that you would receive further information from the Judicial Council?

A. We assumed from the tone of this letter that we would.

Q. What in that telegram indicates to you that you were going to receive something further?

A. There was no—first, it says here that Dr. Robinson—“from the decision of the Washington State Medical Association by which Dr. Robinson was expelled.” The Washington State Medical Association had made no decision for expelling Dr. Robinson, except in that his membership was automatically dropped when he was expelled from the local society.

Number two, this merely says the action was sustained, the appeal was sustained. It gave no reason whatsoever, he didn't tell us where we stood at all. We felt as though that we should be given a reason why. We asked our legal counsel and they said, “Well, this is the most peculiar type of a decision. Surely, something will be following to say why.” What is the status? Do you refer it back to the membership for retrial? Tell us what we are supposed to do. We did not receive that until later.

Q. Well, now, Dr. Tompkins, the telegram states without equivocation, does it not, it says here, “was expelled from membership in the Washington State Medical Association and the Walla Walla County Medical Society is sustained.” Now, that is perfectly clear, is it not, that it relates to both? A. Yes.

(Testimony of Morton W. Tompkins.)

Q. Was that not considered by the trustees at the time? A. Certainly.

Q. And they decided that it did not apply, is that correct? A. No.

Q. Well, what steps did you take to clarify the matter?

A. I believe the president of the society wrote to the state association and also to Dr. Cuniffe, and I believe to the AMA officially, to the legal department. Now, I don't know whether all three of those letters went [1761] out, but at least two of them did, asking for a clarification and the reasons for the decision. Our big question was why.

Q. Referring to your deposition, Dr. Tompkins, you say:

"We believed the telegram, we didn't question the telegram at all, but we did want confirmation."

Then the question was asked:

"What would you have done in the event it had been a signed letter, confirmed properly? You would have taken the same action, wouldn't you?"

And you answered:

"If they had sent us a signed letter in the first place, instead of a telegram, and stating the reasons why the procedure—where our procedure had been reversed, we would have reinstated Dr. Robinson at the next meeting."

Do you remember that? A. Yes.

Q. And is that your testimony today?

A. I think so.

Q. Then, it was just a matter that this came to

(Testimony of Morton W. Tompkins.)

you in the form of a telegram instead of in the form of a signed letter?

Mr. Kimball: That isn't what the witness [1762] said.

Mr. Sembower: Well, now, counsel, wait until I finish my sentence.

Mr. Kimball: Wait until I make my objection.

The Court: I think you should fairly state the facts. He says if they stated the reasons in the letter.

Q. (By Mr. Sembower): And stated the reasons in the letter, then you would have reinstated him, is that correct?

A. I think so. That is my opinion, I don't know what the society would have done.

Q. Now, Dr. Tompkins, did you then make a telephone call to the American Medical Association?

A. I did.

Q. When did you make that call?

A. April 8, 1952.

Q. On what authority did you make that telephone call? A. My personal authority.

Q. Didn't have any authority from the society or the state association? A. No.

Q. And who did you get on the line when you called Chicago? A. Eventually, Dr. Howard.

Q. Who did you call in the first place?

A. Dr. Lull.

Q. And just a moment before I go into that conversation. I would like to refer to an exhibit. I have here, Dr. [1763] Tompkins, Plaintiff's Exhibit

(Testimony of Morton W. Tompkins.)

164, which is a letter from Edward L. Rosling to Dr. M. H. Robinson, and this letter is dated February 14, 1952, and states:

“Dear Sir:

“The Executive Committee of the Washington State Medical Association has considered your letter of February 4, 1952, at its meeting held February 13, and the writer was directed to answer your letter.

“There are just two requisites of membership in the Washington State Medical Association. Article III, Section 2 of the constitution provides that the active members of the state association are all the active members in good standing in the component societies from whom or on whose behalf the required annual dues have been received by the secretary-treasurer of the State Association. Inasmuch as the Judicial Council has reversed the decision of the Walla Walla County Medical Society, expelling you from membership, your status as a member of the Walla Walla society is the same as if the action of the society expelling you had never taken place. The next question is whether or not you are a member in good standing. This depends on whether your dues [1764] are paid. If your dues have been paid in the local society, and if your dues have been received by the secretary of the state association for 1952, you are a member of the Washington State Medical Association.”

Do you recall seeing a copy of this letter?

A. I don't know. I believe Dr. Robinson cir-

(Testimony of Morton W. Tompkins.)

ularized the board of trustees with a copy of this at some time in March. I am not sure.

Q. Well, was that discussed by the members of the board, if you recall? A. I don't recall.

Q. Do you recall anyone getting in touch with Mr. Rosling and asking him, perhaps, for clarification of this, or was it definite enough as it stood?

A. I don't know. I didn't contact Mr. Rosling.

Q. As a matter of fact, however, no action was taken pursuant to this opinion, was it?

A. No.

Q. Did Dr. Robinson then tender his dues to the local society? A. Yes.

Q. And what happened to the dues?

A. They were not acted upon.

Q. Just held? [1765] A. Yes.

Q. Well, now, as to your telephone conversation to Dr. Lull, which was referred to Mr. Howard, I believe, do you recall the nature of that conversation? A. Yes.

Q. You did take a wire transcription of that, is that correct? A. I tried.

Q. And what did you do with that wire transcription? A. Used it for correspondence.

Q. Well, I mean this particular wire?

A. You mean how did I take it?

Q. I mean after you had the transcription of this telephone conversation, what did you do with it?

A. I took it to the medical society meeting that evening.

(Testimony of Morton W. Tompkins.)

Q. You had the conversation on the afternoon of April the 8th? A. Yes.

Q. And you went to the society meeting on the night of the 8th? A. Yes.

Q. And you played this wire? A. Yes.

Q. Was it a clear transcription or what about it? A. No it was very poor. [1766]

Q. What became of the wire transcription finally? A. I used it for correspondence.

Q. You mean you cleared it off, the message? You mean you cleared the wire and used it over again? A. It actually is a tape.

Q. Why did you play the transcription at the meeting?

A. Well, I had hopes that I could transfer directly to the members of the society the results of the conversation. I did not play it from the time I took it until I took it to the meeting.

Q. Now, you were no longer president of the society, were you? A. No.

Q. The president, I believe, by this time was Ralph S. Keyes? A. Yes.

Q. Why were you functioning, then, in this capacity of contacting the American Medical Association?

A. Whenever anything came up regarding this case, because I was the presiding officer at the time, and this is carried down to the present time, I have been the official representative of the medical society working with counsel in preparing any materials, to correct materials, and so on, as it concerned this

(Testimony of Morton W. Tompkins.)

matter, primarily because I was dealing with it first hand and knew [1767] details better than anyone else.

Q. Dr. Tompkins, tell us, in substance, what you said to Dr. Howard and what he said to you, if you recall?

A. I called Dr. Howard, he told me that Dr. Lull was in Florida on vacation. He said, "Can I help you?" I says, "We have just received a so-called decision, unsigned, on blank paper, regarding the findings of the Judicial Council on the appeal of Dr. Robinson from the expulsion of the local medical societies."

I said, "At that hearing, we did not have adequate notice, the hearing was not conducted in a manner in which all of the facts pertinent were brought out, and this was definitely shown by the fact that they gave as the reasons for their decision that we did not follow Steps 1, 2 and 4 of our constitution and bylaws, so we felt that we had been given the run around that Dr. Robinson had been successfully able to interject another completely separate subject in the hearing at Los Angeles, and the matter for which he was expelled had nothing to do with the matter that he was arguing down there."

I asked him if there was any way possible that a rehearing or an appeal to a higher body could be made.

Q. And what did he say to you?

A. He told me at that time, he said, "I don't know, you [1768] might petition the Judicial Coun-

(Testimony of Morton W. Tompkins.)

cil for a rehearing." He says, "They are going to meet within—" I believe he gave me a date of approximately two weeks. He said, "If you will have some of these things that you have told me about and exemplify them somewhat, have those in my hands, I will present them to the board." He said, "What is your present situation there?"

Q. That is what Dr. Howard said to you?

A. Yes. I said, "At the present time there is considerable concern as to whether Dr. Robinson is in good mental health. In fact, there are some of us who are somewhat fearful of our own safety."

He said, "You go ahead and prepare these materials, get them here within ten days to two weeks, and I will present them to the Judicial Council."

Q. Did Dr. Howard have any suggestions during the interim as to how you might protect yourselves?

A. No.

Q. Now, Dr. Howard gave you his suggestion on this, so far as you know, on the basis of what you were telling him, is that correct? A. Yes.

Q. Did he tell you that there was any established procedure for a rehearing before the Judicial Council? A. He didn't mention it. [1769]

Q. Did he state that this was the first rehearing application that had ever been made? A. No.

Q. No conversation of that kind? A. No.

Q. Now, did you also state to Dr. Howard that the society was contemplating secession from the American Medical Association? You didn't mention that a moment ago.

(Testimony of Morton W. Tompkins.)

A. I don't recall whether that came into that particular conversation or not, but I know that at that particular time, or during this interval of between February 1st and March 29th, or some such date, that there had been conversations to the point that perhaps the local medical society would withdraw completely from the state association and the AMA.

Q. Who had participated in those conversations?

A. Specifically, I don't know, but I know that Dr. Page and I were two.

Q. Did Dr. Lange participate in those conversations? A. I don't know.

Q. Where did those conversations take place?

A. Here and there over town, wherever two doctors happened to meet.

Q. Did any of these conversations take place at trustees' meetings? [1770] A. No.

Q. The unofficial meetings that you have referred to? A. No.

Q. After the trustees' meetings, if you recall?

A. They may have, but I doubt it.

Q. Did Dr. Stevens participate in any of those conversations? A. I don't know.

Q. Dr. Yengling? A. I don't know.

Q. What about Dr. Keys, was he present among those conversations?

A. Probably, but I don't know.

Q. Dr. Ralston? A. I don't know.

Q. Dr. Lange, do you know whether he did?

(Testimony of Morton W. Tompkins.)

A. Other than Dr. Page, I don't know.

Q. Only you and Dr. Page are the only ones you recall? A. Specifically.

Q. Did you transmit this attitude to the state association in any way? Did you tell any of them about it? A. No.

Q. I have here the deposition of Ernest B. Howard, taken upon written interrogatories before Leon M. Golding, Notary Public for the County of Cook, State of Illinois, [1771] on Monday, March 19, 1956.

Mr. Sembower: It is very short, your Honor, if I may read it.

The Court: Do you have any objection to this form of reading it, gentlemen?

Mr. Kimball: No.

Mr. Rosling: How many pages are there?

Mr. Sembower: Well, there are about four pages, very short.

“Ernest B. Howard, having been first duly sworn, deposeth and saith as follows:

“Interrogatory No. 1. State your name and address.

“A. Ernest B. Howard, 535 North Dearborn Street, Chicago, Illinois.

“Interrogatory No. 2. Do you hold an official position in and for the American Medical Association, and if your answer is “Yes,” what is that position and how long have you held it?

“A. Yes. I do. The position is assistant secretary, beginning April 1, 1948.

(Testimony of Morton W. Tompkins.)

“Interrogatory No. 3. Have you held an official position in connection with the Judicial Council of the American Medical Association during the last five years, and if your answer is “Yes,” [1772] what position or positions have you held and for what periods?

“A. Yes. Since December, 1950, I have been a member ex officio, without the right to vote, of the Judicial Council, as well as all other standing committees of the House of Delegates and the Board of Trustees.

“Interrogatory No. 4. In that certain deposition of your testimony taken upon oral interrogatories in the case of Robinson vs. Lull, et al., Civil Action No. 55 C 1053 in the District Court of the United States for the Northern District of Illinois, Eastern Division, on December 15, 1955, at Room 1414, 105 South LaSalle Street, Chicago, Illinois, the following questions were propounded to you and you gave the following answers at page 10 of the transcript, did you not?

“(a) Q. Dr. Howard, when did you first hear of Dr. Miles H. Robinson, if you recall?

“A. I don’t recall exactly when I first heard of him. It was first brought to my personal attention by the telephone call from Dr. Tompkins. I had heard something about it before he he called, but I don’t remember when I had first heard [1773] about it.

“(b) Q. That was the telephone call of what date?

(Testimony of Morton W. Tompkins.)

“A. I don’t know the exact date.

“(c) Q. Was that the call around the, on on or about April 8, 1952?

“A. I don’t know. It could have been then. It was several years ago, I recall that.

“(d) Q. You say that Dr. Tompkins called you on that date. Do you remember what Dr. Tompkins said to you at that time?

“A. I remember generally. I should like the record to be clear, he called Dr. Lull. Dr. Lull was out of the city or not in the office at that time, so the call was transferred to me. I do not recall, I am quite sure that is the record. He didn’t call for me, but I took the call as assistant secretary.

“He called about the action of the Judicial Council in reversing the State Society with respect to Dr. Robinson, and expressed, as I recall it, and my recollection is vague because this was [1774] one telephone call several years ago, but as I recall it, he expressed the deep concern of himself and his colleagues at this action of the Judicial Council in reversing in effect their action with respect to Dr. Robinson. And he wondered if there was anything they could do further, was there anything that the Society could do in view of the fact that they felt the Judicial Council had acted precipitantly and unfairly, and had not given them ample opportunity to prepare the case.

(Testimony of Morton W. Tompkins.)

“In effect, he was protesting the action and wondering if anything could be done.

“As I recall it, I told him that he could petition for another hearing if he thought he had been treated unfairly.

“(e) Q. Did he tell you why they were particularly concerned about the decision of the Judicial Council? You used the words he was concerned about it.

“A. He was deeply concerned, and he expressed the opinion that the Society [1775] might even withdraw from the Association if the opinion, if that was the final and irrevocable opinion.

“I now ask you those same questions in this case. Are your answers to these questions the same? If not, what is your present testimony and why are you changing it?

“A. My answer would be the same to those questions.

“Interrogatory No. 5. Has anyone discussed these interrogatories with you. If your answer is “Yes,” state who that person or those persons were; when and where and in what manner the discussions took place, and in detail what was said to you, and what you said.

“A. No.” [1776]

* * *

Q. Dr. Tompkins, yesterday I believe you testified that there had been a serious grievance handled

(Testimony of Morton W. Tompkins.)

recently by the grievance committee since the Robinson case which had given rise to a lawsuit. Is your memory precise on that?

A. I know only what some other doctors told me. I had no part in the proceedings.

Q. You didn't have any opportunity, perhaps, last night to check into that and see if that is true or not? [1778]

A. I saw no necessity.

Q. Do you think there is a possibility that that was not occurred?

A. No.

Q. You are certain that it has occurred, then?

A. Yes.

Q. Dr. Tompkins, I show you Plaintiff's Exhibit 221, which is a copy of the opinion, I suppose we would call it, of the Judicial Council for the December 2, 1951, hearing in Los Angeles in Dr. Robinson's appeal, which bears the certification of George F. Lull, the Secretary of the Judicial Council of the American Medical Association, and ask you if you have seen that before?

A. Yes.

Q. Isn't it a fact that Dr. Robinson sent you a certified copy of this?

A. I don't know.

Q. You don't recall whether he did or not?

A. I was not president at the time.

Q. You mean you were not president at the time it was sent to you?

A. Yes.

Q. You mean that you don't know whether your mail had not been delivered or something of that sort?

A. I did not receive that personally. At that particular [1779] time, I was a member of the board

(Testimony of Morton W. Tompkins.)

of trustees, Dr. Keyes was president, and all communications of that type would have gone directly to Dr. Keyes.

Q. Oh, I see. So that this was sent to Dr. Keyes, to your knowledge? A. Yes.

The Court: What was that number, please?

Mr. Sembower: Plaintiff's 221.

Q. Did Dr. Keyes show it to you?

A. Yes, it was presented to the board of trustees.

Q. And did that modify your attitude at all with respect to whether the decision of the Judicial Council was a definite one or final one? A definite one, I will say first? A. Yes.

Q. Well, what was that modification?

A. It was because of that decision that prompted my telephone call to the AMA at the time I talked to Dr. Howard. It was very obvious in the conclusions that they had drawn that they had lost complete sight of the reasons for the expulsion and had mixed in other completely extraneous matter at the Los Angeles hearing.

Q. In other words, you just didn't agree with this opinion at all, is that correct?

A. It was completely fallacious. [1780]

Q. And you sought to then obtain a rehearing?

A. Yes.

Q. This did not influence you in any way to take steps to reinstate Dr. Robinson.

Now, referring to your deposition in this case, Dr. Tompkins, I find on Page 61 this colloquy. I was questioning you at that time about whether

(Testimony of Morton W. Tompkins.)

there was a provision of the by-laws which had since been amended, an amendment of the bylaws, that is, of the state and local society, providing that a doctor, pending an appeal of a suspension or dismissal from the society, expulsion, would be held in status quo. There is some comment between the attorneys at this point which makes it a little difficult to pick up the questions and answers, but your answer, as I read it here, is:

“No, I am not, but I am aware that our own bylaws stated that so long as there is any appeal, the sentence imposed shall stand and that”——

And I asked you:

“That is your local bylaws?”

And you answered:

“And the state also has been amended and this last year”——

And I asked you: [1781]

“Is this in the printed bylaws?”

And you say:

“The state bylaws were amended at this last state”——

And I say:

“The state bylaws?”

And you say:

“Yes, and it is in our local bylaws, too.”

And I asked you:

“Did Dr. Howard know that when you spoke with him?”

(Testimony of Morton W. Tompkins.)

And you say:

“I don’t know, it wasn’t brought up.”

Now I ask you, has there been amendment to the local bylaws which provides that a doctor shall be held in status quo pending his appeal?

A. I think so.

Q. Do you recall when that amendment was adopted?

A. I am not sure regarding the local society. I am certain about the state.

Q. When was the state amendment adopted, then?

A. Either in 1955 or 1954, at the House of Delegates meeting.

Q. And you believe that such a local bylaws was adopted, [1782] but you don’t remember the exact date of that? A. Yes.

Mr. Kimball: If the Court please, I believe that is immaterial. It is far past the dates involved here.

Mr. Sembower: Well, of course, I didn’t know until he gave us the date and I was interested in his state of mind at this time.

The Court: All right.

Q. (By Mr. Sembower): In your telephone conversation with Dr. Howard, Dr. Tompkins, was there any part of the conversation related to the situation in which Dr. Robinson was at this time with respect to his hospital practice and his general practice, if you recall?

A. I don’t recall, but I don’t believe so.

(Testimony of Morton W. Tompkins.)

Q. That is, you don't recall telling Dr. Howard that Dr. Robinson had no hospital privileges?

A. No.

Q. Dr. Tompkins, I find in your deposition on Page 63, the deposition in this case, this reference to the record which had been prepared after the hearing in Dr. Ralston's office. That this was the November 21, 1950, proceeding. You state:

"Yes, after the hearing in Dr. Ralston's office, the transcript had some jumbings of statement and there were typographical [1783] errors and it was not first-class recording, if you wish to call it that, and I invited Dr. Robinson to go over that transcript with me to make it more clear as to who said this and who said that and what was said, but I said, 'We cannot change its context of any statement.' I had an appointment with Dr. Robinson and, unfortunately, one evening I had to call and cancel it. I had another appointment with Dr. Robinson which he failed to meet.

"So then I saw Dr. Robinson again and whether it was his own personal attitude or what, he didn't seem to be particularly anxious to sit down with me and go over this transcript, so I said, 'Then I will have to correct it as I can.' "

And my question:

"And did you make corrections?"

And your answer:

"I made corrections only in putting punctuation in here and there where it was obvious"—

And my question: [1784]

(Testimony of Morton W. Tompkins.)

“Did you change any words?”

Your answer was:

“No, no. That is the reason that the transcript does not read as smoothly as it might, because I did not make any particular change in it at all. Very, very slight.

My question:

“In other words, it isn’t exactly a record”——

Your answer:

“Yes, the copies you have here are the exact ones because they were never retyped.

And then the question:

“Well, now, we found some of them here that had bond paper on several pages, Dr. Tompkins. I wonder if you could shed some light on where they came from?”

And Mr. Kimball interposed:

“He is referring to this particular copy which I had turned in very early, and it was pointed out that one page was different from the other copies. It was like this on this set.”

And you answered. [1785]

“I haven’t any idea and”——

Have you had an opportunity to refresh your recollection at all with respect to those transcripts, Dr. Tompkins? A. In what particular respect?

Q. Well, I just wondered, do you remember how extensive your alterations were? Is it still your recollection as you testified here?

A. The testimony was correct. The alterations were very slight. There was actually only one area

(Testimony of Morton W. Tompkins.)

in the transcript which did not give clearly the context of what had been testified, and that involved the play of conversation that had occurred at the time when Mr. Noel Edwards—Dr. Robinson denied that he had told Mr. Noel Edwards, he had mentioned the word “syphilis” and Mr. Edwards’ answer and then a little bit right in there. The rest of the transcript was reasonably good, and that was the particular part that I wanted to go over with Dr. Robinson to correct, and, lacking Dr. Robinson’s cooperation, I corrected some typographical errors and left that pretty much the way it was, and I think you can see any potential changes that may have been made by the differences in the two exhibits that are already admitted.

Q. Well, you and Dr. Robinson did make some endeavor to [1786] get together on this, did you not?

A. Well, I made an effort and Dr. Robinson was co-operative to the point that he actually made two appointments with me. Unfortunately, I am an obstetrician and had a delivery over which I had no control, I had to cancel one just a few minutes before I was to arrive at his home. The next appointment was approximately two or three days later and he just never showed up for that one.

Q. Well, now, Dr. Tompkins, you did most of the work in preparing the appeal, that is, the application to the Judicial Council for a rehearing, is that correct? A. Yes.

(Testimony of Morton W. Tompkins.)

Q. And I understand from your prior testimony that this took about two solid weeks of your time?

A. Yes.

Q. Now, during this time you did have collaboration and assistance of the state association, is that correct? A. Yes.

Q. And in this connection, I refer to Exhibits 197, 199, Plaintiff's Exhibits 201, 202, 203, 204, 205 and 217, which appear to be copies of exchanges of correspondence between you and the state people or correspondence within the state association referring to your endeavors in this connection.

If you would like to leaf those through, I would like [1787] to ask you if there were any other correspondence that you had or telephone calls that are not recorded here?

A. I have never seen this letter to Dr. Benson from Mr. Rosling before.

Q. For the record, this is Plaintiff's Exhibit 202.

All right, I will ask you a question or two about that.

A. So far as I know, these represent the entire correspondence.

Mr. Sembower: Well, I think rather than to take the time, then, with the witness' comment, I will let Plaintiff's Exhibit 202 speak for itself.

The Court: All right.

Q. (By Mr. Sembower): Dr. Tompkins, I find in your deposition this statement and ask you if you recall giving this testimony. You were being asked about the custom, if there was one, in the

(Testimony of Morton W. Tompkins.)

locality with reference to reporting syphilitic patients to the public health office, and you stated—I think I will give you the questions and answers far enough ahead so you know what the setting is here. I say:

“Q. Have you had very many of them?” meaning syphilitic patients,

“Over the last few years? [1788]

“A. No, we don’t see much any more.

“Q. Did you report those?

“A. Yes. Not by name, only by number.

“Q. Have you reported all of them in the past?

“A. Yes.

“Q. Without exception? A. Yes.

“Q. Even though you have them as patients and under treatment, you report?

“A. Even though they are so-called tertiary cases, not infectious, the state likes to have—they don’t communicate it, but they like to have all cases reported.”

A. I can’t hear you, I’m sorry.

Q. Oh, I’m sorry. (Reading continued.)

“A. Even though they are so-called tertiary cases, not infectious, the state likes to have—they don’t communicate it, but they like to have all cases reported.

“Q. Is there a custom followed, not only the law, and you know what that is, but is there a custom followed as to reporting [1789] those among the doctors in this community?

(Testimony of Morton W. Tompkins.)

“A. I don’t think the doctors in this community as a whole report very well.

“Q. That would be your impression of the custom as it is followed here?

“A. Yes, at least that is the impression I get. I have always reported all of my cases, but I have only once reported a patient by name, and that case was a patient who deliberately stopped treatment before his treatment was up and I reported him by name to the health department immediately. He was due for a treatment, he failed to come in. He was notified to come in for treatment, he failed to come in. He was notified that unless he came in for treatment I would have to turn the case over to the health authorities.”

Do you remember giving that statement?

A. Yes.

Q. Now, after you had prepared the petition for a rehearing, you forwarded that to the American Medical Association, is that correct? [1790]

A. Yes.

Q. And I believe at that time you sent in a covering letter dated April 21, 1952, to Dr. Howard?

A. Yes.

Q. That is Plaintiff’s Exhibit 206. Then I believe that after you had sent the material in to the Judicial Council, that a meeting was held by the Council on April the 25th, 1952, at which this matter was considered and the rehearing was granted, is that correct?

(Testimony of Morton W. Tompkins.)

A. I only know that the rehearing was granted.

Q. And you didn't attend any meeting at that time?

A. No.

Q. Now, I would like to ask you a few things about this letter of the 21st. You stated:

"In confirmation of our telephone conversation of April 8th, and at your suggestion, I have prepared the enclosed material. In view of this material we are very hopeful that the judicial council will consider the matter thoroughly. Regardless of their decision, would you please notify me by telegram what that decision is?"

Now, I wanted to ask you about that, Dr. Tompkins. You seemed to be disturbed about the telegraphic [1791] notification on the first decision, but in this instance you didn't have any concern about that being a valid method of communication.

A. I think your inference is wrong.

Q. Well, I would like to know why. It seems to me there is a difference here and I just wonder what the difference is?

A. A marked difference. Our concern on the original telegram was not on its authenticity, but on the fact that we had no reasons given whatsoever as to why and no procedures instructing us as to what our future actions would be. We were left completely in the dark. On this particular thing, I asked for a specific bit of information as to whether or not the petition for the rehearing was granted.

Q. Now, Dr. Tompkins, at the hearing in Los Angeles, was anything stated there about the de-

(Testimony of Morton W. Tompkins.)

cision coming to you in any special form other than a telegram, if you recall?

A. I don't think it was mentioned.

Q. Wasn't mentioned at all. All right, now:

"Should the judicial council decide to let the decision stand, the local society wishes to act at once."

Now, what did you mean by "act"? What kind of [1792] action was contemplated?

A. The April 7th meeting—April 8th meeting—was scheduled primarily to reinstate Dr. Robinson. Following my telephone call and with the instruction from Dr. Howard, we tabled that action, or rather did not bring it up in view of the permission, so to speak, that we had to present a petition for rehearing. Had a rehearing not been granted, we wanted to know so we could act on the reinstatement at once.

Q. Well, now, could it have been possible that the society was thinking of preferring new charges against Dr. Robinson at that time? A. No.

Q. Or renewing the old ones? That wasn't in contemplation at all? A. No.

Q. Well, then, let me ask you now, I read last night Dr. Howard's version of his understanding of your telephone conversation. Now, he was vague about many details of it, but he was precise about one, it seemed to me. That was that you had said that there was a strong possibility that the society would secede. Now, might he not have inferred from this statement here, without any additional expla-

(Testimony of Morton W. Tompkins.)

nation as to what you planned, that that was the action which the society expected to take? [1793]

A. I don't know.

Q. Did that ever occur to you at this time?

A. I don't know.

Q. Did it occur to you at this time that this statement might, in consideration of your conversation, sound like a statement by the society that it would withdraw, possibly, if this decision were not favorable? A. I doubt it.

Q. Then continuing:

"There were several points of information brought up in the telephone conversation which I cannot mention in this letter. I do not wish the centered enmity of Dr. Robinson to be pointed toward me. There are several of us here who are frankly fearful of direct violence to us or our families."

Now, Dr. Tompkins, what did you have in mind—well, let me ask you specifically, what were the points that you brought up in the conversation that you did not include in the letter?

A. I think I testified on that yesterday. I recorded the telephone conversation.

Q. Well, yes——

A. I testified yesterday that at the time of that conversation [1794] there were many of us that felt that Dr. Robinson was showing evidence of mental illness and there were times that we were sometimes fearful of our personal safety, and that was a very, very true and literal statement.

(Testimony of Morton W. Tompkins.)

Q. Well, now, what did you say to Dr. Howard along those lines?

A. That is exactly what I said.

Q. And then you reiterated it in this letter here?

A. Yes.

Q. Why didn't you set it forth in this letter?

A. I didn't particularly want it to be written down that I was saying that Dr. Robinson was showing signs of mental illness.

Q. Why didn't you want to write it down?

A. Some things are best left unwritten.

Q. Some things may be also better left unsaid, isn't that true? Didn't you say this to Dr. Howard?

A. I did.

Q. And at the time that you said it to him, did you know that he also was an ex officio member of this Judicial Council? A. No, I did not.

Q. Would it have made a difference to you had you known that? [1795]

A. I think perhaps it might, I don't know.

Q. You think perhaps you wouldn't have said that? A. It is a possibility.

Q. Why would you not have said it to him if you had known he was an ex officio member?

A. I would——

Mr. Tuttle: If the Court please, that is asking for the witness to speculate on what might have been done. He doesn't know what——

The Court: Well, he may answer.

Mr. Rosling: Furthermore, I think counsel is in error when he says the assistant secretary of the

(Testimony of Morton W. Tompkins.)

association is an ex officio member at the time these hearings were held.

Mr. Sembower: Do you you have that deposition?

The Court: Howard's deposition?

Mr. Rosling: I don't think Dr. Lull was even an ex officio member of the Judicial Council.

The Court: What is the date of this letter or this communication of yours to Dr. Howard?

Mr. Sembower: The letter is April 21, 1952, Plaintiff's Exhibit 206, from Tompkins to Howard.

The Court: Yes. The deposition shows, "Since December, 1950," he says, "I have been a member ex officio, without the right to vote, of the Judicial Council." [1796]

Mr. Sembower: Yes.

Mr. Rosling: Is that Howard or is that Lull?

Mr. Sembower: No, that is Howard.

The Court: This is Howard, Ernest B. Howard.

Mr. Sembower: Would counsel like to see the deposition?

Mr. Rosling: No, I will just take your statement for it.

Q. (By Mr. Sembower): Would you answer the question, then, Dr. Tompkins?

Mr. Sembower: Would you read the question, please?

(Whereupon, the following question was read: "Why would you not have said it to him if you had known he was an ex officio member?")

(Testimony of Morton W. Tompkins.)

A. In the light of my present position, I don't think that I would have made any statements of the type to Dr. Howard had I known he was connected with the Judicial Council for fear it might have been interpreted as trying to influence the Judicial Council.

Q. Now, Dr. Tompkins, what was the foundation for your comments, for your statements, to Dr. Howard that you and others feared direct violence to you and your families?

A. Dr. Robinson's actions.

Q. What were those actions?

A. And attitudes. [1797]

Q. What were those actions? First, let me ask you—I'm sorry, but I would like to ask you, you say there are several of us here; who does the "us" include?

A. Other members of the medical society.

Q. Well, what other members?

A. I would prefer that you would ask them individually as they testify.

Q. Well, I would like to ask you if you have any who you referred to. You said "us," which makes that a collective term.

A. Well, I can't recall specifically, but I believe Dr. Keyes was one who indicated some such thing.

Q. All right, who was another?

A. I don't recall.

Q. Do you not remember any others than Dr. Keyes?

(Testimony of Morton W. Tompkins.)

A. I would not want to testify that I know of someone else at the present time because I don't remember.

Q. I mean, the reason that you don't want to testify is that you really do not remember?

A. I do not remember.

Q. Well, now, was it more, however, than you and Dr. Keyes? A. Yes.

Q. Was it all the membership in the society?

A. No, I think most of these things, most of these fears, were centered in the ones who were having to deal with [1798] the matter most personally as officers.

Q. Well, now, Dr. Tompkins, what was the basis? You testified a moment ago because you thought he was suffering from a mental illness. Is that characterizing it correctly, or how did you put it?

A. I think that is the way I characterized it.

Q. Now, what was the foundation for saying he was suffering from a mental illness?

A. He was showing what I consider paranoiac tendencies.

Q. You state that using the term technically, do you, as a medical man? A. Yes.

Q. Now, did you know anything from Dr. Robinson's background which would lead you to believe that he might be susceptible to paranoiac tendencies, know of your own knowledge? A. No.

Q. Had you heard rumors, however?

A. Only that he had had a mental illness, or I

(Testimony of Morton W. Tompkins.)

correct that, had had a so-called nervous breakdown.

Q. Now, in your deposition, Dr. Tompkins, you made some reference there, which I will not read the page exactly if you don't care for me to—I mean I am not disposed to read the page exactly—but you made some references there that your wife was very apprehensive of Dr. [1799] Robinson, is that correct? A. That is true.

Q. Now, what was the basis for her apprehensions?

The Court: Would he know that except as they are expressed to him?

Mr. Sembower: I think you are correct.

Q. You also made some references——

The Court: I wouldn't want to undertake to say why women worry.

Mr. Sembower: Yes, that is correct.

The Court: All right.

Mr. Sembower: And it would be hearsay otherwise.

Q. There was some mention made there about the fear on your part and that of your wife for the safety of your children, is that correct?

A. Indirectly.

Q. Well, now, how did that figure into this?

A. It was not the fear directly toward our children, as to what might happen to us or our property.

Q. Oh, you mean you were worried about your property?

(Testimony of Morton W. Tompkins.)

A. If you wish to call a house and a potential fire with our children in it property, yes.

Q. You weren't fearful that your children might be harmed? A. Not specifically, no.

Q. Dr. Tompkins, to what school did your children go at [1800] this time? A. Sharpstone.

Q. Did you know to what school the Robinson children went?

A. Well, at or close to this time they lived very near the high school.

Q. Isn't it actually the fact that they attended the Prospect Point School?

A. They probably did at one time, but at one time I think they probably attended Sharpstone. They were in the Sharpstone district.

Q. Now, Dr. Tompkins, I want to refer the Court particularly to Page 69 in the transcript. Do you remember the statements on 69? I will ask you to read this and ask you if you want to give any additional explanation concerning this testimony here, or whether that testimony stands?

A. Where do you wish me to start?

Q. This is the transcript of Dr. Tompkins' deposition. Starting with the answer here (indicating).

A. (Reading):

"That was a circumstance that led to personal apprehension and to the apprehension in my home. I may as well tell you now, it is no secret, my wife is extremely tense and tight"— [1801]

Q. I am not asking you to read it aloud, Dr. Tompkins; I just asked you to read it to yourself

(Testimony of Morton W. Tompkins.)

and ask you whether there are any changes you wish to——

A. Beg your pardon, I understood you wanted me to read it.

Q. I'm sorry, I didn't mean to convey that impression. A. Now your question?

Q. I am not challenging you about it, Dr. Tompkins, I just want to give you an opportunity to make any changes in your testimony, if you wish to make them. If that stands as your testimony——

Mr. Rosling: If your Honor please, there isn't any testimony yet.

Mr. Sembower: Well, I mean I ask him whether he makes any change in this statement in the deposition.

The Court: Well, how is that to get into the record or be considered by me? I don't know what you are talking about, obviously.

Mr. Sembower: That is true.

The Court: And you may use the deposition for any purpose, it is the deposition of a party, but if you read part of it, then the other side may put in any other part that pertains to the same subject matter.

Mr. Sembower: I am perfectly happy for that to happen and, if I may, I will put this deposition in and give the other party the right to cite it at any time. [1802]

The Court: Of course, you have the right to what amounts to cross-examine this witness. If you want to read that and ask him if he so testified, you

(Testimony of Morton W. Tompkins.)

can do it that way, and you can read it directly into the record.

Mr. Rosling: I think what counsel is endeavoring to do, your Honor, is to get statements into the evidence of something that the witness has learned from his wife, which the Court has already ruled out, and is now endeavoring to get it in in this indirect manner.

The Court: Well, I don't know what it is until it is presented. There is nothing before me so far.

Mr. Sembower: Well, your Honor, my problem here is that I don't want to bring out personal problems, and yet I feel that this passage here is of great significance in the state of mind of this witness.

The Court: Well, there hasn't been great delicacy about personal problems so far in this trial, a great many of them, so I don't see why we should start now.

Mr. Sembower: All right, then, I will read this to Dr. Tompkins and ask him if he has any comment about it:

"That was a circumstance that led to personal apprehension and to the apprehension in my home. I may as well tell you now, it is no secret, my wife is extremely tense and tight. My wife has [1803] anxiety tension, which is, oh, nervousness, if you wish to call it that, and in 1949 required the care of a psychiatrist for about two weeks in order to teach her how to relax enough to face the ordinary problems of life. We have two healthy, husky, vigorous, normal boys and they drive her nuts and

(Testimony of Morton W. Tompkins.)

there is the point of tension in our home. My wife does not have the background, emotional background, to hold up under stresses and strains, and when she hears rumors here or there, they were more than rumors, call them rumors even though they were rather widespread, with her particular emotional background, I had that to deal with. So I have a very personal problem which maybe some of the other doctors don't have, and where the rumor came from, I don't know now, but when the rumor came out that one of Dr. Robinson's boys had had difficulty and the police or the sheriff's office had picked him up or they had theoretically traced a couple of cases of attempted arson to him, she became [1804] worried for fear such a thing might be involved in our home just because of association of our children in school.

"Q. Did you make any investigation of that rumor to see what the true facts were?

"A. No, I merely tried to quiet her down.

"Q. Might it not have quieted her if you had got the facts on it?

"A. I think she got the rumor from—well, I don't know."

Q. Now, Dr. Tompkins, did you make that statement? A. Yes.

Q. Continuing with the letter, Dr. Tompkins:

"Since Dr. Robinson's expulsion from the society, he has been expending considerable effort to build up as friendly an attitude toward himself as possible outside Walla Walla. He has circularized many

(Testimony of Morton W. Tompkins.)

of the doctors of the state as well as most of the lawyers within a 200-mile radius with letters and voluminous correspondence having only his side. These people can and do become sympathetic to his arguments. He has finally reached a lawyer who is willing to consider his [1805] case. However, this lawyer very markedly modified his attitude after talking to one of our members and hearing a few of the vital points.”

Now, Dr. Tompkins, who was the member who talked with the lawyer? A. Walter Cowan.

The Court: Who was that? Walter——

A. Walter Cowan.

Q. (By Mr. Sembower): And who was the lawyer? A. I don't know.

Q. (Reading continued):

“However, this lawyer very markedly modified his attitude after talking to one of our members and hearing a few of the vital points. Should we be sued, and it is very likely that we shall be, regardless of the outcome of this appeal, the enclosed brief will be the fundamental basis of our defense. The first two pages only constitute the appeal. The State Association has co-operated fully in submitting some of the material presented. I have been working steadily since our telephone conversation, even at the sacrifice of much of my [1806] professional work, in order to prepare this brief. The thirteen days consumed have barely been sufficient and I believe supports our contentions in the brief.”

(Testimony of Morton W. Tompkins.)

Dr. Tompkins, did you receive any response to this letter? A. Yes.

The Court: What is the number of that letter, Mr. Sembower? You gave it before, but I didn't get it.

Mr. Sembower: That is 206.

The Court: All right.

Q. (By Mr. Sembower): When did you hear a response to that letter?

A. I am not sure of the date we were notified that the Judicial Council had granted the rehearing.

Q. Dr. Tompkins, to your knowledge, did Dr. Robinson have the opportunity to present anything to the Judicial Council on the matter of the rehearing?

A. There is evidence that has been presented here that indicated he had notice that a rehearing had been granted and was offered the opportunity of presenting a brief.

Q. What I mean is with respect to the rehearing itself, did you give Dr. Robinson any notice or the society that a petition for rehearing had been filed?

A. No. [1807]

Q. Now, Dr. Tompkins, I have here Plaintiff's Exhibit 232, which is a letter from you to Mr. Ralph W. Neill, who is Secretary of the Washington State Medical Association, dated June 26, 1952, in which you state:

“Dear Ralph:

“Dr. Keyes has sent the following wire to Dr. Lull and Dr. Cuncliffe:

(Testimony of Morton W. Tompkins.)

“ ‘Dr. Miles H. Robinson of Walla Walla, Washington, filed suit yesterday in the amount of \$134,500 against the Walla Walla County and Washington State Societies.

/s/ “ ‘RALPH S. KEYES, M.D.,
“ ‘President, Walla Walla
Medical Society.’

“All further contacts with the AMA will be thru your office at the suggestion of Dr. Benson. You will undoubtedly be served within a few days with your copy of the charges. Our local hope is that a copy of this suit will be placed in the hands of each of the Judicial Council members before their decision is written.”

Now, Dr. Tompkins, what did you mean by “our local hope is”? [1808]

A. The hope of the members of the local medical society.

Q. What did you think that the effect of that would have?

A. I would have to give you some background on that.

Q. Well, it seems to me that you could answer. I don't want——

A. Your Honor——

Q. ——a dissertation.

A. At the time of the second hearing before the Judicial Council, we had a very orderly hearing and at that time I presented positive evidence to the members of the Judicial Council that the local society had not violated any of its provisions of its

(Testimony of Morton W. Tompkins.)

constitution or bylaws in the procedure during which Dr. Robinson was expelled. As each point was presented, I went around and asked the question of each of the members of the Judicial Council, "Gentlemen, are you satisfied that we followed our procedures? We have the evidence here that we did so." There was a short discussion and they conceded that the local society had followed all of their procedures conscientiously; that the only variation——

Q. When did this occur, this conversation you are just referring to?

A. This is the procedures of the second hearing before the Judicial Council.

Q. And the point is you talked to each of the individual [1809] members after the hearing was concluded?

A. During the hearing.

Q. Well, you just said you walked around and talked to them.

Mr. Tuttle: He walked around in the hearing.

A. No, I was standing by the table.

The Court: He means he went around——

A. I went right around the table.

Q. (By Mr. Sembower): Oh, I see; all right.

A. Person by person, doctor by doctor.

Q. Yes.

A. And that is exactly the way I did it. At the end of that, there was an informal discussion or formal discussion, if you wish to call it that, amongst the members and they admitted that the local society had not violated any of their rules and regulations,

(Testimony of Morton W. Tompkins.)

but there was still the technical point as to whether or not the authority or whether the legality of the state grievance committee was valid because at that time the state grievance committee had their actions reviewed by the board of trustees. The entire decision hinged on that one point.

In the face of this suit, we wished to have their decision, if they were going to write one, if they were going to uphold the reversal, was going to be upheld on [1810] that point.

Q. Now, what was this date?

A. And so that the local society would be absolved.

Q. What was this date?

A. This was, I believe, the June 7th hearing of the Judicial Council.

Q. Yes. A. 1952.

Q. No suit had been filed then, had it?

A. No. I believe the suit was filed about June 20th or something.

Q. Did you just say that you told the Judicial Council a suit was going to be filed?

The Court: No, no.

A. No.

Mr. Sembower: All right.

A. No.

Mr. Sembower: All right.

The Court: He said they based it on grievance committee procedure of the state and he hoped that after this suit was filed, that if it was to be on that point, that they would make it clear it was on the

(Testimony of Morton W. Tompkins.)

question of state procedure and absolve the local. Is that, in effect, what you said?

A. Correct. [1811]

The Court: All right.

Q. (By Mr. Sembower): Did you suggest to the Judicial Council that a suit might be filed?

A. At that time?

Q. Yes. A. I don't think so.

Q. But you simply suggested to them that you would like for them to cast their opinion in such a way that if suit were filed, that the local society would be absolved?

A. I don't believe suit was mentioned at that time. We wanted to be absolved because we had followed our procedures.

The Court: I didn't understand it that way, Mr. Sembower. I understand what he is telling me now, or is testifying here, is the background of what happened at the hearing in order to explain what he later did. The later communication that he had made reference to the suit.

Mr. Sembower: Oh, I see.

The Court: He doesn't say there was any reference to a suit at the time of the hearing. Is that correct?

A. Not to the hearing, that is correct, your Honor.

Q. (By Mr. Sembower): I wanted to ask you about the hearing, Dr. Tompkins. In addition to what you have told us, who attended that hearing held in Chicago, is that [1812] correct?

(Testimony of Morton W. Tompkins.)

A. Yes.

Q. From the Washington Society and the local society?

A. I was the only representative from the local society. Dr. Benson was there from the state society. I am not sure whether Mr. Rosling was present or not. I believe you have a transcript of that hearing somewhere in evidence here.

Q. I was going to ask you if he was present because I don't think his name appears on the list.

A. I don't recall. I know Mr. Rosling did not go back to Chicago with Dr. Benson and I, and I assume if he were going to be present at that hearing, that probably he would have been on the plane with us.

Q. Well, now, what about Mr. Wynnicoff, was he not there?

A. I don't know Mr. Wynnicoff.

Q. You don't know him at all?

A. I don't, no.

Q. He appears in the list of persons present from Washington.

A. I don't know who he is.

Q. What about Mr. Jared, was he there?

A. I don't know.

The Court: What was that last name?

A. Shelby Jared. [1813]

Mr. Sembower: Jared.

The Court: Jared, yes.

A. J-a-r-e-d. The only ones I could *possibly* as being there were Dr. Benson, myself, Dr. Cunniffe,

(Testimony of Morton W. Tompkins.)

Dr. Buie, and Mr. Hall, Mr. Holloway. Those are the only ones I specifically know as individuals.

Q. (By Mr. Sembower): Did you know Dr. Buie? A. Yes.

Q. Was he there? A. Yes.

Q. Dr. Cunniffe? A. Dr. Cunniffe.

Q. Dr. Donaldson, was he there?

A. I don't know Dr. Donaldson.

Q. He is a member of the Council. Might he have been present?

A. I did not meet any of the members of the Council except——

Q. Dr. Lukins, do you know him, was he there?

A. I don't know.

Q. Dr. Homer Pearson?

A. I don't know him.

Q. Did you have an opportunity, Dr. Tompkins, during the hearing to refer specifically to the Edwards matter and the Brooks matter, the factual situation there?

A. We merely presented the signed statement of Mr. Brooks as evidence that we had received a written complaint, but we did not go into the complaint itself.

Q. Did anyone at that hearing present any testimony or argument on behalf of Dr. Robinson?

A. His briefs were presented.

Q. Was there any reference made by you and Dr. Benson in the hearing to, shall we say, the merits of the case, the factual situation underlying the case here?

(Testimony of Morton W. Tompkins.)

A. We tried to keep that completely divorced, we were talking about procedure.

Q. I now have a list of persons who were present, and I find that the record shows that from Washington, Dr. Benson was present, Dr. Raymond L. Zech. Was he there, do you recall?

A. Zech, Z-e-c-h?

Q. It is S-e-c-k here.

A. It might be a misprint. Yes, I believe he was. He was in Chicago at that time. Also, Ross Wright was in Chicago, he may have been there.

Q. What about Ralph W. Neill, was he there?

A. I don't remember.

Q. That is Ralph Neill of the Washington State Society, the Secretary? A. Yes.

Q. What about Mr. J. W. Greger, he is listed as present? [1815] A. I don't know him.

Q. Mr. Neal Wynnicoff?

A. Don't know him.

Q. These two gentlemen, I understand, are connected with the bureau activity in Washington. Does that refresh your recollection at all?

A. I still don't know Mr. Wynnicoff.

Q. He is connected with the bureau in King County. A. I still don't know him.

Q. The opinion then came out, Plaintiff's Exhibit 234, did it not, subsequent to this hearing?

A. I can't identify it by number.

Q. Well, it is the opinion of the Judicial Council of the rehearing of Dr. Miles Robinson?

A. Yes.

(Testimony of Morton W. Tompkins.)

Q. I note here that it says:

“After consideration of the supplementary data presented the Council remains convinced that the procedures providing for disciplinary measures by the constitution and bylaws of the Society extant at the time this case arose were not followed.”

In your interrogation of the Judicial Council members as you confronted them one after the other, did [1816] any of them make that statement to you, do you recall?

A. The only point of conflict was to the legality of the state grievance committee.

Q. And—well, I will let the opinion speak for itself.

Now, what was the next thing that you did after this with respect to the Judicial Council, Dr. Tompkins, if you recall?

A. I don't understand your question.

Q. What did you do next with reference to the Judicial Council? Did you get in touch with the AMA again or the Judicial Council?

A. I came home and waited for that report.

Q. Well, then, what did you do after that?

A. Nothing.

The Court: What is the number of that report?

Mr. Sembower: The opinion is 234.

The Court: Thank you.

Mr. Sembower: 234, Plaintiff's.

Q. Well, see if this refreshes your recollection, then, Dr. Tompkins. I have Plaintiff's Exhibit 239, which appears to be a letter from you to George F.

(Testimony of Morton W. Tompkins.)

Lull, M.D. Do you recall writing that letter to Dr. Lull? A. Yes.

Mr. Kimball: What is the date of it, counsel?

A. July 25, 1952. [1817]

Q. (By Mr. Sembower): And then I have here Plaintiff's Exhibit 240, which is headlined, the title, "Opinion of the Judicial Council, American Medical Association, on the Rehearing of the Appeal of Dr. Miles E. Robinson," and ask you what this is?

A. This is a suggested *same* of an appeal of the type that we wanted from the Judicial Council.

Q. Now, you don't mean appeal?

A. I mean opinion.

Q. Opinion. And did that accompany your letter as an enclosure? A. Yes.

Q. Now, did you submit this to the Judicial Council upon any kind of legal advice of any sort?

A. I don't know.

Q. Did you talk——

A. We had been sued by this time.

Q. And what was the purpose of this, then?

A. The purpose of this was to substantiate in writing the arguments we had presented and the opinions that I had unofficially received at the time of the Judicial Council hearing absolving the local society of any breach of procedure. The opinion that you just showed me did not specifically state why they upheld their reversal. As long as the local society was to be involved in a suit, [1818] we wanted it down in black and white that we had been absolved before the Judicial Council.

(Testimony of Morton W. Tompkins.)

Q. That is, again you weren't satisfied with this opinion that the Judicial Council sent out which ruled again in favor of Dr. Robinson?

A. Not in its form.

Q. So you thought then you would put it in a form which would be acceptable to you, is that correct? A. Yes.

Q. Now, who worked together on this form? Who wrote it?

A. It is very likely that I did.

Q. Oh, is this just an endeavor of your own?

A. No, I suspect from the way that it is drawn up that I had legal counsel with it.

Q. Well, now, who else did you consult with on this form?

A. I don't know, but I am sure I did not do it alone.

Q. Well——

A. It would have to be one or more of the members of the board of trustees at that time.

Q. Well, would it be Dr. Stevens? A. No.

Q. Dr. Yengling? A. No.

Q. Dr. Page? A. No. [1819]

Q. Dr. Lyman? A. No.

Q. Dr. Keyes? A. Probably.

Q. Dr. Ralston?

The Court: Was Keyes then President?

A. Keyes was then President. I doubt Ralston.

Q. (By Mr. Sembower): Well, Dr. Lange?

A. No.

Q. Dr. Beaver? A. Possibly.

(Testimony of Morton W. Tompkins.)

Q. Well, do you remember pretty clearly Beaver did assist you with this? A. I don't know.

Q. Dr. Carlson? A. Very likely.

Q. Dr. Pratt? A. I doubt it.

Q. And Mr. Fullerton? A. No.

Q. Well, then, according to your recollection, you recall clearly that Dr. Keyes worked with you on it?

A. I didn't say clearly, I said he could have. I did not send this out until it had been at least read by two others. Dr. Keyes was President at the time, Dr. Carlson was [1820] Secretary. Dr. Carlson's office was next door to mine and he probably read it. I am not sure, but this was probably shown to our legal counsel.

Q. Mr. Judd Kimball? A. Mr. Kimball.

Q. And did you discuss this at a meeting of the trustees?

A. I don't know. If so, by the time we got to the suit, we were discussing things everywhere.

Q. Well, then, this might have been discussed outside of the trustees meeting at some gathering of the defendants in this suit, perhaps?

A. Probably. Much more likely to be discussed there than the board of trustees.

Q. Well, now——

The Court: Pardon me, does the record show when the state court suit was instituted here?

A. The last part of June, your Honor.

Mr. Rosling: June 26, 1952.

The Court: June 6th?

Mr. Sembower: June 26th.

(Testimony of Morton W. Tompkins.)

The Court: Oh, I thought it was in here some place, but I didn't remember.

Mr. Sembower: Yes, it is in the record some place.

The Court: Yes, all right.

Mr. Sembower: Also, your Honor, merely as a reference [1821] at this point, during the testimony of Dr. Robinson I read into the record the deposition of Dr. Lull of the American Medical Association, pages 123 and 124, which gives the minute entries of the Judicial Council covering this meeting.

The Court: I see.

Mr. Sembower: I won't take time to read it again.

The Court: Yes, all right.

Q. (By Mr. Sembower): Well, now, Dr. Tompkins, this opinion that you have here comes out the same way as the opinion that the Judicial Council prepared? A. Yes.

Q. I notice that the opinion of the Judicial Council is of the appeal of Dr. Miles E. Robinson. That is an error, isn't it? A. Probably.

Q. There is no doubt, however, that was the Dr. Miles H. Robinson. I notice that that is carried over also in—what shall we call this?

A. Says Miles H. Robinson here.

Q. It says Miles E.

A. That is typographical, then.

Q. Just follows this right here? A. Yes.

Q. Well, now, it comes out the same way that

(Testimony of Morton W. Tompkins.)

the opinion of [1822] the Judicial Council came out, doesn't it? A. Yes.

Q. The result? A. Certainly.

Q. But what is the difference in it?

A. The difference is that the Judicial Council report or opinion, if you wish to call it that, does not specify where the error of technique of procedure occurred and it throws the burden of proof upon the local society, when actually the only reason the expulsion was reversed was on the technicality.

Q. That was your understanding of it?

A. Exactly.

Q. Now, in other words, you think that you wrote an opinion which represents a better opinion than the Council itself wrote, is that correct?

A. I do.

Q. All right. What happened to your opinion then? A. It is here.

Q. Well, did the Council adopt your opinion or adhere to its own? A. They ignored it.

Q. Well, they gave you an answer to it, didn't they? A. No.

Q. Oh, just a second. [1823]

Mr. Sembower: I ask that Plaintiff's Exhibit 252 be admitted in evidence.

Mr. Kimball: No objection.

The Court: It will be admitted.

(Whereupon, the said letter was admitted in evidence as Plaintiff's Exhibit No. 252.)

Q. (By Mr. Sembower): Dr. Tompkins, I show

(Testimony of Morton W. Tompkins.)

you Plaintiff's Exhibit 252, which is a photostatic copy of a letter dated December 4, 1952, from Edward R. Cunniffe to Morton W. Tompkins, M.D., and ask you if you remember receiving that letter?

Mr. Kimball: Counsel, maybe I can straighten you out on that. That letter wasn't sent to Dr. Tompkins, it was sent to Lull, and then Lull sent a similar letter.

Does that help any?

Mr. Sembower: It doesn't help because the exhibit speaks for itself. I am looking at a photostatic copy of a letter to Dr. Tompkins.

Mr. Kimball: Very well.

Mr. Sembower: Dr. Lull's name doesn't appear here at all.

Mr. Kimball: Very well.

The Court: What was the question, whether he remembers that? [1824]

Mr. Sembower: I asked whether he remembered receiving this letter.

The Court: Oh.

A. I have no knowledge that I ever received this letter from Dr. Cunniffe, but I do believe that I did get a similar letter from Dr. Lull.

Q. Well, I will read—

A. I believe that, I don't know. I don't think I ever received that letter.

Mr. Sembower: I will read this exhibit into the record, Plaintiff's Exhibit 252, photostatic copy of a letter dated December 4, 1952, from Edward R. Cunniffe to Morton W. Tompkins, M.D., Walla Walla Valley Medical Society, 330 Drumheller

(Testimony of Morton W. Tompkins.)

Building, Box 1038, Walla Walla, Washington:

“Dear Doctor Tompkins:

“Your letter of July 25 to Dr. Lull, in further reference to the Robinson appeal, was considered by the Judicial Council at a meeting held in Chicago, October 17, 1952.

“In your letter you suggest that the Council revise its opinion of June 9, 1952, in the Robinson appeal case which in effect affirmed the previous opinion [1825] of the Council sustaining the appeal. You submitted with your letter a draft of a suggested revision of the June opinion.

“After due consideration of your letter, it was the opinion of the Council that further action by it in this appeal would not be warranted. The Council gave careful consideration to the issues presented by the appeal, both when the appeal was originally heard and again when the rehearing was held last June in Chicago. It does not now believe the case can be reopened even to the extent suggested in your letter.

“Sincerely yours,

“EDWARD R. CUNNIFFE M.D.,

“Chairman, Judicial Council.”

You don't have any recollection of receiving that letter? Is your address 330 Drumheller Building?

A. No.

Q. What is your address?

A. 120 East Birch.

(Testimony of Morton W. Tompkins.)

Q. And this is addressed to 330 Drumheller Building, Box 1038. What would that address be, if you know?

A. Probably the Medical Service Bureau [1826] office.

Q. And you never saw this letter?

A. Not to my memory. Not in that form, not signed by Dr. Cunniffe.

Mr. Sembower: Your Honor, I have here a deposition taken in this case of George F. Lull in Chicago, July 14, 1955, and I refer to page 124, which gives the minutes of the Judicial Council meeting of October 17, 1952. It is not long and I would like to read it, if I may, into the record.

The Court: All right.

Mr. Sembower (Reading):

“Q. Dr. Lull, do you have in your possession any other minutes pertaining to Dr. Miles H. Robinson?”

“A. Yes. I have the minutes of the meeting of October 17, 1952, at which time were present: The Chairman, Dr. Cunniffe; Dr. Walter F. Donaldson, Dr. J. B. Lukins; Dr. Howard, the assistant Secretary of the Association, was present; Mr. Holloway and Mr. Hall.”

The Court: What page are you reading from, Mr. Sembower?

Mr. Sembower: 124. It is the large one.

The Court: Oh, it isn't this deposition [1827] here?

Mr. Sembower: No, that is the written interrogatories.

(Testimony of Morton W. Tompkins.)

The Court: Oh, I see; all right.

Mr. Sembower (Reading continued):

“That part concerning Dr. Robinson starts on page 2 and continues on page 3 where marked.

“Q. The part you have marked reads as follows:

“‘A communication from Walla Walla Valley, Washington, Medical Society protesting decision of the Judicial Council in appeal of Dr. Miles H. Robinson.

“‘A letter from Dr. Morton W. Tompkins of the Walla Walla Valley Medical Society making certain demands on the Judicial Council in connection with its decision in the appeal of Dr. Miles H. Robinson was presented. The Chairman said he did not see what more the Council could do; that for the first time in its history the Judicial Council had held a rehearing of an appeal, and the demand of [1828] the Walla Walla Valley Medical Society could not be entertained by the Council.

“‘Mr. Holloway thought the letter ought to be acknowledged, and the Chairman asked him to write an answer for the Chairman’s signature, a copy of which the Chairman would send to each Council member, and would let Mr. Holloway know whether or not the answer was approved.’

“The end of it doesn’t appear to be marked.

“A. That is the end of it right there.”

And that is all that relates to this matter.

Q. Dr. Tompkins, how long have you practiced in Walla Walla? A. Since 1940.

(Testimony of Morton W. Tompkins.)

Q. Are you thoroughly familiar with the medical practice here?

A. I don't know what you mean.

Q. Well, you are conversant with the mechanics of conducting a practice here in Walla Walla, are you not?

A. I think so.

Q. If you were expelled by the society and lost your hospital privileges and one of the hospitals refused to take you back, would you be able to practice effectively [1829] in Walla Walla?

Mr. Kimball: If the Court please, I believe that might go to the question of damages, which I understand the Court has ruled in abeyance.

The Court: Yes, that would be a question of damages, wouldn't it?

Mr. Sembower: All right.

Q. Dr. Tompkins, are you an officer of the staffs at either of the local hospitals here?

A. No.

Q. Do you participate in the staff organization of one of the hospitals?

A. I am a member of both.

Q. What is the function of the staff of the hospital so far as admissions of doctors to bring patients into the hospital is concerned?

A. Judge qualifications of physicians to bring patients in?

Q. Yes.

A. Is that the question you are asking?

Q. That is the question.

Mr. Smith: Your Honor, I think the bylaws, as far as St. Mary's Hospital is concerned, speak for

(Testimony of Morton W. Tompkins.)

themselves on that. I don't think the record should have the witness' opinion regarding them. [1830]

The Court: Well, if I get it, I think counsel's purpose is to interrogate as to what part the staff takes in the admission.

Mr. Sembower: That is correct. I know that the bylaws——

The Court: The bylaws speak for themselves. You may proceed.

Mr. Sembower: Thank you.

A. The requirements for staff membership are set up in the constitution and bylaws of each hospital. The staff itself has a credentials committee. They process the application of the applicant, certify that the statements made in the application are true, and after that has been done, pass the certified application to the board of directors of the hospital staff. I am not sure whether it is called the board of trustees or the board of directors, but I think it is called trustees.

Mr. Smith: Your Honor, may I interrupt to inquire which hospital the witness is speaking about?

Mr. Sembower: Be glad to have him clarify it.

Q. Which hospital are you speaking of?

A. Generally they are the same. There are very minor details.

Q. You are on the staffs of both and this description relates both to St. Mary's and the Walla Walla General [1831] Hospital?

A. Yes, yes. I think I will specify some differences as I proceed.

(Testimony of Morton W. Tompkins.)

After the board of trustees of the staff has received the certified application, they pass on their recommendations to the staff itself as to whether it will be accepted or rejected. The staff then votes on those that have been recommended for—well, they vote on all, whether they are recommended for acceptance or rejection. The staff then votes and after an affirmative vote, the applicant is a member of the staff, provided he is also acceptable to the administration of the hospital.

In this particular point, there is a difference in the two hospitals in Walla Walla. At St. Mary's Hospital, the administrator of the hospital is the final authority and she can on her own authority neutralize any staff recommendation. At the General Hospital, it is a hospital board. I do not think that the manager of the General Hospital can neutralize a recommendation of the staff, but the hospital board can.

Q. Now, are you a member of the credentials committee of either of these hospitals? A. No.

Q. Were you a member of the credentials committee at the [1832] time when Dr. Robinson's expulsion occurred? A. No.

Q. Were you a member of either or both of the credentials committees at the time that the Judicial Council made its finding in his favor, which would be around February 1st?

A. I have never been a member.

Q. Never been a member of those?

A. Of the credentials committee of either hospital.

(Testimony of Morton W. Tompkins.)

Q. Did you participate in any conferences or discussions of the staff at either of the hospitals involving Dr. Robinson related to this controversy?

A. No. I don't believe there were any.

Q. Well, you did know that if he were expelled from the society, that he would lose his hospital privileges, didn't you?

A. That is up to the hospital administration.

Q. And also the staff, is it not?

A. No, that is an administrative problem.

Q. That is——

A. That is not a staff problem.

Q. That is, it is exclusively an administrator's responsibility to determine what doctor is admitted—may admit patients to the hospital?

A. Yes. [1833]

Q. Well, what function does the staff have in that connection, any?

A. To pass on qualifications, but the hospital administrator, if we may take St. Mary's as an example, because there is a difference between the administrator of St. Mary's and the board of General, the two will have comparable power and authority, so when we say administrator, let us talk about St. Mary's specifically.

The administrator of St. Mary's Hospital can admit or deny admittance to any doctor she so pleases and there is no one who has any recourse to her action whatsoever.

Q. Now, however, must that doctor be on the eligible list approved by the staff? A. Yes.

(Testimony of Morton W. Tompkins.)

Q. And that is a function in addition to the by-law provision, that he must be eligible for membership in the society?

A. I don't understand your question.

Q. Well, I mean could a person who was eligible for membership in the society, but who was opposed by the members of the staff, be approved by the administrator of St. Mary's and then be permitted to take patients there?

A. Yes.

Q. That could happen? [1834]

A. Yes.

Q. That is, that staff cannot vote on that?

A. No.

Q. It is, in other words, entirely a matter, then, of the eligibility for society membership that determine the general group of doctors that may be admitted?

A. On the other hand, it *would* a foolish move on the part of the administrator to admit a doctor whom the staff has said does not have the qualifications or should not practice in this hospital.

Q. Why would it be foolish?

A. A matter of public relations with the people who keep her hospital occupied.

Q. Well, now, how do you mean public relations?

A. Just exactly that.

Q. Well, I mean detail them. I mean, who would be offended by that or what public alienated?

A. The doctors——

Mr. Smith: Your Honor, I think these questions are speculative. Dr. Tompkins is speculating as to

(Testimony of Morton W. Tompkins.)

the motives of the St. Mary's Hospital. I will object to the question.

Mr. Sembower: Your Honor, I don't think what the witness says here, other than what he says as to matters of fact, would be binding upon the hospital, but it does give us testimony as to the functioning of the doctors and the [1835] ones that he knows of.

The Court: I don't think it would be binding on the hospital.

Mr. Sembower: I don't see how.

The Court: All right, go ahead.

Q. (By Mr. Sembower): I wanted to know what was involved in the public relations, Dr. Tompkins?

A. A hospital is a rather complex unit. It cannot exist successfully unless the administration and the doctors who work there work for a common purpose and that common purpose should be the proper care of the patient. The rights of each in the functioning of the hospital should be respected by the other.

Q. You mean the administration and the staff?

A. Correct. The staff——

Q. For the good of the patient?

A. The staff will determine the type of care that the patient has.

The Court: This seems to be going pretty far afield.

Mr. Sembower: Very far afield.

The Court: In view of the time limit that is involved here.

Mr. Sembower: Yes, I'm sorry about that.

(Testimony of Morton W. Tompkins.)

The Court: We could go on with this for days.

Q. (By Mr. Sembower): What I wanted to get at, however, [1836] Dr. Tompkins, was you said it would be foolish for the administrator of the hospital to accept the patients of a doctor who was not acceptable to the staff. Now, what I want to know is, just cogently and clearly, what would be the consequences of that?

The Court: You would incur the ill will of the other doctors on the staff who bring patients to the hospital, isn't that what you had in mind?

A. That is the only thing.

The Court: All right, go ahead. We have got that settled, something else now.

Mr. Sembower: Well, I think——

A. May it please your Honor——

The Court: Well, I will recess and maybe you can think up something else in the meantime.

(Whereupon, a short recess was taken.)

Mr. Sembower: I think, your Honor, I have just a few questions, just three or four.

Q. Dr. Tompkins, do you know of any doctor whose patients have been admitted to the hospital who has not been accepted by the staff at the particular hospital? Either Walla Walla General or St. Mary's?

A. I believe that there have been a few patients admitted to either or both of the hospitals by doctors who live out of the community who bring an occasional case in on [1837] a courtesy basis prior

(Testimony of Morton W. Tompkins.)

to the time that they have applied to the staff as a courtesy member.

The Court: That wasn't what you had in mind, was it, Mr. Sembower?

Mr. Sembower: That is not what I had in mind.

The Court: You meant whether any local doctors?

Mr. Sembower: I meant local doctors.

Q. Do you know of any local doctors in the community who are not in that special classification, Doctor? A. No, I don't.

Q. Dr. Tompkins, did you ever see any indication that any Dr. Robinson was going to commit physical violence on you, any specific indication?

A. One specific time, I believe that if the table had not been present, I would have been subjected to that.

Q. And where was that?

A. That was at the Los Angeles hearing of the Judicial Council.

Q. That was what you mentioned yesterday, is that correct? A. Yes.

Q. Do you know of any other specific instance where the indications were that he would commit any physical violence on any doctor in this city in the society, know of your own knowledge?

A. No. [1838]

Q. Dr. Tompkins, you don't know of any specific information that Dr. Robinson was ever in a mental institution, do you? A. No.

Q. None whatever? A. No.

(Testimony of Morton W. Tompkins.)

Q. To your knowledge, was he ever in a mental institution? A. No.

Mr. Sembower: That is all, your Honor.

Cross-Examination

By Mr. Kimball:

Q. Just a few questions, Dr. Tompkins. Late in your direct examination you were asked if you had received a certain letter from Cunniffe and you said no. Do you know what I am speaking of?

A. Yes.

Q. I show you what has been marked Defendants' Identification 441 and ask you if you have seen that before? A. Yes.

Q. May I have it, please?

Mr. Kimball: May it be admitted?

Mr. Sembower: No objection.

The Court: It may be admitted, then, Defendants' Exhibit 441. [1839]

(Whereupon, the said letter was admitted in evidence as Defendants' Exhibit No. 441.)

Q. (By Mr. Kimball): Please read it, including the date.

A. On the stationery of the American Medical Association, August 25, 1952:

"Dr. Morton W. Tompkins,

"Walla Walla Valley Medical Society,

"Walla Walla, Washington.

"Dear Doctor Tompkins:

"Your letter of July 25 informing me of the re-

(Testimony of Morton W. Tompkins.)

instatement of Doctor Robinson to the Walla Walla Valley Medical Society has been received. The delay in answering this was due to the fact that it was referred to our Bureau of Medicine and Legislation and the Director was ill at the time. I am sorry I have no authority to commission Mr. Hall or anyone else to write an additional opinion in the Robinson case for the Judicial Council. I can present your suggestion to the Judicial Council at its next meeting, however, and I shall do that unless I hear from you to the contrary.

“Very truly yours,

“GEORGE F. LULL.” [1840]

Q. The date of this letter is after Dr. Robinson was reinstated, is that correct? A. Yes.

Q. Dr. Tompkins, you were asked concerning the various proceedings held by the society and the trustees in connection with the Brooks vs. Robinson matter. Was there a trustees' meeting on the 13th of December, 1950? A. Yes.

Q. You can refresh your recollection from the minutes, if you wish, but I am referring to the meeting where the matter was referred to the state grievance committee. A. Yes.

Q. Can you give us any explanation why that corporate action was taken at that time?

A. We had received the transcript of the hearing held before the board of trustees on November 21st. At that particular time, we were doing everything possible within our power to be as fair and exact

(Testimony of Morton W. Tompkins.)

in our observance of all the procedural methods, both local and state, that we knew about. We had heard of the formation of the state grievance committee. We knew that the state organization superseded our own and, in addition, we wished to offer Dr. Robinson another hearing, if you wish to call it that, before outsiders, and for that reason, or those reasons, we referred the matter to the [1841] state grievance committee.

Q. Dr. Tompkins, did the board of trustees have a trustees meeting on the 15th day of May, 1951, as shown by the minutes? A. Yes.

Q. Was the matter of Brooks vs. Robinson considered by your trustees at that meeting?

A. Yes.

The Court: What was that date again?

Mr. Kimball: May 15, 1951.

The Court: 1951?

Mr. Kimball: Yes, your Honor.

The Court: All right.

Q. (By Mr. Kimball): Did your board of trustees at that meeting consider all the evidence that they then had pertaining to this matter?

A. Yes.

Q. Among the things they considered, did they consider the evidence they heard at the November 21st meeting of 1950?

A. It was available, parts of it were read.

Q. Parts of the transcript were read?

A. Yes.

Q. Speaking of that transcript of the November

(Testimony of Morton W. Tompkins.)

21st meeting, 1950, did it substantially record the statements [1842] that were made by the witnesses and the parties at that hearing? A. Yes.

Q. Did you also at the meeting of 5-15-51 consider the state grievance committee opinion?

A. Yes.

Q. You had received that a short time previous?

A. Yes.

Q. How long before, if you recall?

A. I believe within a week.

Q. After that trustees meeting of May the 15th. 1951, was a summary or comprehensive summary drawn up of the trustees' actions in this matter for presentation to the society as a whole?

A. Yes.

Q. Who drew that up? A. I did.

Q. Did you actually draw it up physically? I mean, was there a writing drawn up? A. Yes.

Q. Where is that? A. In my pocket.

Q. Would you refresh your recollection from it?

A. Yes.

Q. Does it contain the same material that was read before [1843] the society as a whole at the expulsion meeting of May the 22nd, 1950, a week later? A. Yes.

Q. Was that read by you or Dr. Carlson at that meeting, or both of you?

A. I believe this part was read by me.

Q. And did it find its way into the minutes of the meeting of the 22nd of May, 1951?

A. Yes.

(Testimony of Morton W. Tompkins.)

Q. Did that summary as prepared by you comprise a true and accurate summary of the actions and findings of the trustees pertaining to this matter? A. I felt that it did.

Q. At the society meeting of May the 22nd, 1951, you testified yesterday concerning some of the things that happened and I believe you said that Dr. Robinson presented some matters in his own defense, is that correct? A. Yes.

Q. Why don't those remarks appear in your minutes of the meeting of May the 22nd, 1951?

A. They were requested and refused.

Q. Requested by whom to whom?

A. Either I wrote a letter or a letter with my authority by Mr. Fullerton was written to Dr. Robinson specifically requesting—— [1844]

Q. Just a moment, that is enough. I show you what has been marked Plaintiff's Identification 126 and ask you if you recognize that? A. Yes.

Mr. Kimball: Any objection?

Mr. Sembower: No objection.

Mr. Kimball: We would like to offer this.

The Court: It will be admitted.

(Whereupon, the said letter was admitted in evidence as Plaintiff's Exhibit No. 126.)

Q. (By Mr. Kimball): Will you kindly read this to the Court?

A. Letterhead Walla Walla Valley Medical Society, June 19, 1951:

(Testimony of Morton W. Tompkins.)

“Miles H. Robinson, M.D.,
“Drumheller Building,
“Walla Walla, Washington.

“Dear Mr. Robinson:

“I have been instructed to advise that the Minutes of the Meeting of May 22, 1951, have been prepared and as soon as approved a copy will be furnished for your personal use. However, President Tompkins stated that at this meeting you read certain defense remarks from a prepared manuscript, [1845] that it is his opinion the minutes would be more fully complete if those remarks were incorporated therein, and requested that I ascertain whether or not the manuscript is obtainable for the above purpose. Your early reply to President Tompkins' inquiry will be greatly appreciated.

“Very truly yours,

“C. E. FULLERTON,

“Executive Secretary.”

Q. Did you instruct your secretary to write that letter? A. I did.

Q. To your knowledge, did any reply come in reply to this letter?

A. To my knowledge, there was no reply.

Q. Were you ever furnished a copy of the remarks that Dr. Robinson made at that meeting?

A. No.

Q. In connection with and a short time before the meeting of May 22, 1951, Dr. Tompkins, did you seek the advice of legal counsel on procedures that you should follow? A. I did.

(Testimony of Morton W. Tompkins.)

The Court: When was this date?

Mr. Kimball: A short time before May 22, 1951.

The Court: I see. [1846]

Q. (By Mr. Kimball): I show you Plaintiff's Exhibits 109 and 110. Do you recognize those?

A. Yes.

Q. They do not purport to be true copies because they don't show a letterhead, do they?

A. That is right.

Q. I show you a document, three pages, containing substantially the same material and ask you if you recognize what I show you?

A. Without reading carefully word for word, I believe they are substantially the same.

Q. And you notice, however, there is no letterhead on the exhibit? A. Yes.

Mr. Kimball: I would like to have this marked identification next in order for the defendant.

The Court: Yes. Let's see, that is a copy with the letterhead added. What number?

Mr. Kimball: Yes, 109 and 110. The copy that is an exhibit is apparently a retyped copy from Dr. Robinson's offer. I am offering the original that was furnished.

The Court: All right. The thing I had in mind if we could make A numbers.

Mr. Kimball: I think that is a good suggestion. They might be marked 109-A and 109-B to correspond with the [1847] exhibit. [1848]

(Testimony of Morton W. Tompkins.)

The Court: Pardon me, have those been marked 109-A and 110-A?

A. 110-A.

The Clerk: 110-A.

The Court: All right. Yes, those have been admitted.

Q. (By Mr. Kimball): Dr. Tompkins, did you attempt to comply with the advice you received by these letters in your meeting of May the 22nd, 1951?

A. I did.

Mr. Kimball: No further questions.

The Court: Any redirect?

Mr. Sembower: Just one or two questions here on the matters that have just come up.

Redirect Examination

By Mr. Sembower:

Q. Dr. Tompkins, you referred to the December 13th meeting of the board of trustees of the Walla Walla Valley Medical Society. Was this a regular meeting of the board of trustees? [1854]

A. What do you call a regular meeting?

Q. I ask you that. It isn't denominated a special meeting, but it doesn't seem to fall within the normal sequence between those meetings. Was it called specially, as a matter of fact?

A. I believe it was.

Q. And it therefore should be noted as a special meeting?

A. The board of trustees has never had a specific time at which it will have its meetings.

(Testimony of Morton W. Tompkins.)

Q. Oh, I see.

A. Whenever there is a sufficient amount of business, a meeting is called.

Q. I notice there were four members present, Dr. Page, Tompkins, Lange and Ralston. Does that constitute a quorum of your board of trustees?

A. Three is a quorum.

Q. Thank you. I find in the minutes:

“The charges made in the letter of Dr. Miles H. Robinson to the Board of Trustees of the Walla Walla Valley Medical Society dated November 7, 1950, were carefully considered in detail, and it was the unanimous opinion of the Board that the charges were without merit.”

Then there also is the resolution which was [1855] adopted saying that the complaint made by Thomas R. Brooks justified reference to the board of trustees, reference to the grievance committee of the Washington State Medical Association.

Now, was that the first time that the trustees had considered these matters?

A. Would you please state the dates again?

Q. Well, I will just ask you simply first about the Brooks complaint, was that the first time that the board had considered that matter?

A. No, we—which matter?

Q. The Brooks matter, first?

A. The Brooks matter. We had had a hearing on this.

Q. But was this the first time that the board

(Testimony of Morton W. Tompkins.)

had considered it in its executive session or special session as to the decision to be taken?

A. I don't understand what you are getting at.

Q. You had a hearing?

A. We had a hearing.

Q. Was this the first time you had decided what you would do?

A. Yes, this is the first action after we had our hearing.

Q. All right, and that also corresponds to the latter one, does it?

A. This is the first meeting that we had had following— [1856] this is the first official action that we took on the charges of Dr. Robinson and this is the first meeting of the board of trustees, I believe, that was held after the special meeting that Dr. Robinson called.

Q. All right, now, with reference to the May 22nd meeting, or rather with reference to the letter which has just been introduced in evidence, 109-A, written by Judd Kimball to Dr. Morton Tompkins, was this written at your request?

A. I asked Mr. Kimball for advice.

Q. Did you feel you needed legal advice at this time? A. On procedure, yes.

Q. Now, I just wonder about the sequence of dates here. I notice that the date here is May the 18th, but I find that in the minutes of your board of trustees dated May 15th, three days previously, the entry:

“Dr. Beaver moved, seconded by Dr. Carlson, that

(Testimony of Morton W. Tompkins.)

the Board of Trustees, in accordance with the findings of the State Grievance Committee, finds Dr. Miles H. Robinson guilty of violating principles of Chapter II, Section 2, of the current Code of Medical Ethics of the American Medical Association.”

Why did you not feel you needed legal [1857] advice before the finding of guilty? A. I did.

Q. And did you obtain it?

A. The request was made several days before Mr. Kimball actually wrote the letter.

Q. Oh, I see. He didn't get the letter to you before the 15th, then?

A. No, but he told me these things in his office and the letter was confirmatory and explanatory.

Q. Now, with reference to the matter of Dr. Robinson's statements at that May 22nd meeting, did he not in fact tell you that he was speaking from notes? A. Pardon?

Q. You stated that you asked Dr. Robinson for a copy of his remarks given at the May 22, '51, meeting? A. Yes.

Q. Did he not in fact tell you that he was speaking from notes?

A. Well, he had a prepared manuscript from which he read partially and then went on and talked after that.

Q. Well, do you know of your own knowledge that he was not speaking from notes?

A. I was presiding at the meeting. Dr. Robinson read the statements from several sheets of paper at

(Testimony of Morton W. Tompkins.)

the first part of his statement. He was not speaking from notes at [1858] that time.

Q. It is your testimony he was not speaking from notes? A. From what he read.

Q. Let me ask you, I do not find in the minutes of that meeting statements of any others who spoke. Why are there no entries for them?

A. No one else spoke until the discussion.

Q. You mean Dr. Robinson was excused for an hour, did no one else speak then?

A. No one did any talking or discussing until the matter of what the sentence should be.

Q. How did you spend that hour?

A. It was not an hour, perhaps 40 minutes, but not an hour.

Q. Well, how did you spend 40 minutes, then, if no one spoke?

A. After Dr. Robinson was excused from the meeting, I declared the meeting, the body, a jury. I then went through the testimony that had been read and pointed out that there had been a discrepancy in the statements of Mr. Noel Edwards at the various meetings. I pointed those out very specifically. I then wrote the specific things on the blackboard on which they were to vote. The first point was—it was labeled——

Q. Well, now I don't want to unduly prolong this. A. You asked what we did. [1859]

Q. Well, I want to give you the opportunity to answer, but if your answer is there was no state-

(Testimony of Morton W. Tompkins.)

ment made, the time was spent in this kind of activity that you are describing, is that correct?

Mr. Kimball: If the Court please, I think the witness should be allowed to finish his answer.

Mr. Sembower: It is only a matter of time, I am perfectly willing for him to.

The Court: Well, I think he may state generally what was done. The activity was such as you have described?

A. Correct.

The Court: All right, I think that is sufficient.

A. After the vote was taken on the two propositions, they were by written ballot, we waited until the ballots were counted and I announced the decision. I then instructed them regarding the bylaws as to what their future action had to be, since the vote was guilty. And at this time a motion was made for suspension. Then is where the discussion occurred.

Q. (By Mr. Sembower): Was there any pro and con discussion during this 40-minute period?

A. Yes.

Q. On the matter. Well, now, why are there no minutes about that?

A. Dr. Carlson was acting as secretary; I don't know. [1860]

Q. Were there any statements made before Dr. Robinson left the meeting?

A. I don't recall any, I do not believe there were.

Q. There are no minutes about that. Now, about

(Testimony of Morton W. Tompkins.)

Mr. Noel Edwards, who arranged for Mr. Noel Edwards to be there at the meeting?

A. I asked Mr. Fullerton to have him there.

Q. And he did make the arrangements for him to come? A. Yes.

Q. Did you, Dr. Tompkins, prior to this meeting of May the 22nd ever speak to Dr. Robinson directly and tell him that a vote on the expulsion was going to take place? A. No.

Mr. Sembower: That is all. Oh, just a second.

Q. Did Dr. Pratt make any statements at this meeting, if you recall? A. I don't know.

Q. Did Dr. Page? A. Yes.

Q. But there is nothing in the minutes about that?

A. I think the minutes indicate that Dr. Page made a motion to amend. A motion had been made to suspend. Dr. Page made a motion to amend that to read expulsion, and the minutes so show.

Q. In those remarks of Dr. Page, did he state that he [1861] thought that the vote should be unanimous, if you recall?

A. I don't recall that.

Q. Do you remember any members of the society walking out of the meeting during this time, leaving the meeting during this period?

A. During this particular period, no.

Q. Yes, and before the vote?

A. Before the vote, there were some of the older men who take what we call our prostatic vacation. But they all returned.

(Testimony of Morton W. Tompkins.)

Q. Oh, they did. You don't know of any, then, that left the meeting?

A. Not to leave permanently.

Mr. Sembower: That is all.

Recross Examination

By Mr. Kimball:

Q. Two questions, Doctor. Was this meeting of May the 22nd, 1951, well attended?

Mr. Sembower: Well, now, "well" is a rather indefinite word.

Q. (By Mr. Kimball): Do you know how many were there, Dr. Tompkins?

A. I think approximately 31 or 32.

Q. Doctor, do you remember what the vote was on the matters [1862] on which you voted?

A. On the first vote, which was that of guilty regarding a threat, the vote was 26 to 4. The vote on whether privileged information had actually been divulged, I believe, was 25 to 5. There was one vote difference in the two. On expulsion, I believe the vote was 26 to 4.

Mr. Kimball: That is all, thank you.

The Court: Any other questions?

Mr. Sembower: Just one more question.

Redirect Examination

By Mr. Sembower:

Q. Dr. Tompkins, were any witnesses presented other than Noel Edwards? A. No.

(Testimony of Morton W. Tompkins.)

Q. Do you recall anyone at the meeting making the statement, with reference to the state grievance committee findings, "The eyes of the State are on us"? Do you remember that statement being made?

A. Not at that meeting.

Q. Do you remember it being made at some meeting?

A. I believe that that statement probably was made at a meeting at the time the grievance committee problem was being discussed.

Mr. Sembower: All right. That is all. [1863]

The Court: Any other questions?

Mr. Kimball: No.

The Court: That is all, then, Doctor.

(Witness excused.)

Mr. McNichols: Mr. Sherwood. We can finish with Mr. Sherwood before noon, your Honor.

The Court: I refuse to be optimistic about the time element. I thought we were almost through with Dr. Tompkins when we adjourned last evening.

CAMERON SHERWOOD

called and sworn as a witness on behalf of the plaintiff, was examined and testified as follows:

Direct Examination

By Mr. McNichols:

Q. Will you state your name, please, Mr. Sherwood? A. Cameron Sherwood.

Q. And your address?

(Testimony of Cameron Sherwood.)

A. 216 Stanton Street, Walla Walla.

Q. And you are an attorney at law?

A. I am.

Q. And where is your office, Mr. Sherwood?

A. Baker Building.

Q. Do you know the plaintiff, Dr. Miles Robinson?
A. I do. Not intimately. [1864]

Q. Do you recall when you first met him, approximately?

A. I believe that I met him shortly before May 10, 1951.

Q. With respect to these matters, have you refreshed your recollection recently?

A. I have a file, very few papers in it, from which I refreshed my recollection.

Q. Did Dr. Robinson come to see you in your office?
A. He did.

Q. And what was his query to you at that time?

A. He had been referred to me by Dr. Mount, a client of mine, and he complained of some disciplinary proceeding that was about to take place in the medical society and asked me to represent him at the meeting. After hearing his complaints, I stated that I thought that it was of a petty nature and that he ought to go and represent himself at this meeting; that it would be a mistake if a lawyer appeared for him because that would only magnify the matter.

Q. Did he tell you approximately when that meeting was coming up?

(Testimony of Cameron Sherwood.)

A. I assume he did because I knew that there was an imminent meeting planned.

Q. If there was testimony here to the effect that there was a meeting held on the 22nd of May, 1951, does that refresh your recollection? [1865]

A. Yes, I have ascertained from my file that that was the date.

Q. And then when did you next see Dr. Robinson? A. I saw him shortly after May 22nd.

Q. Did he come to see you again?

A. He called me on the telephone and also came to see me.

Q. And did he show you any documents when he came to see you?

A. He, I believe, did. He showed me a mimeographed statement that he had prepared, I believe condemning the medical society for its action on the 22nd.

Q. Well, subsequently, Mr. Sherwood, did you talk to any members of the society about this situation? A. I did.

Mr. Kimball: Subsequent? When?

Mr. McNichols: Subsequent to this expulsion meeting.

Q. To whom did you talk?

A. I advised Dr. Robinson that I did not desire to appear as a lawyer, but that I had good friends among the medical men here, including my personal surgeon, and physicians, Drs. Lyman, Falkner and Lange; that I would try to intercede for him in this matter, resting on this complaint of the patient

(Testimony of Cameron Sherwood.)

largely, and I went down to see Dr. John Lyman, who is in the same building with me, [1866] about the 23rd or 24th, I believe, of May.

Q. Did you have a conversation with Dr. Lyman?

A. I had a brief conversation with Dr. Lyman, who referred me to Dr. George Falkner, his associate.

Q. Did you then go to see Dr. Falkner?

A. I did.

Q. Did you have a conversation with him?

A. I had a lengthy conversation with Dr. George Falkner.

Q. Was anyone else present during that conversation? A. During a part of that time.

Q. And who was that? A. Dr. Lange.

Q. Would you relate the conversation that took place between yourself and Dr. Lange, if any?

Mr. Kimball: If the Court please, I have no objection to this except it should only be the part of the conversation when Dr. Lange was present.

Mr. McNichols: I attempted to restrict it.

The Court: I understood that there was that restriction, also.

A. It is rather difficult for me to recall what portions of the conversation took place before and after Dr. Lange came into Dr. Falkner's office. I will endeavor to exclude from my testimony that which took place preliminarily with Dr. [1867] Falkner.

Q. (By Mr. McNichols): Do you understand that Lange is a defendant and Dr. Falkner is not?

(Testimony of Cameron Sherwood.)

A. I don't have any understanding of who the defendants are. I haven't inquired.

Q. Well, for your information——

A. Except subsequently I have read in the paper.

The Court: The situation is, Mr. Sherwood, that Dr. Falkner is not a defendant here, but Dr. Lange is, so that that is the reason we wish to restrict it to the part where Dr. Lange was present.

A. I will be very scrupulous about that.

Q. (By Mr. McNichols): What was the subject of your conversation in Dr. Lange's presence?

A. When Dr. Lange came in, as I recall, I advised him as to my presence there, the purpose of my presence there, not as a lawyer but as one interceding at the suggestion of Dr. Mount, who is a client and friend.

He said, "Well, you certainly don't want to take that man's case." And I said, "Why," and he said, "Well, he is emotionally disturbed," and Dr. Pratt had stated that he had paranoidal tendencies.

Mr. Kimball: I didn't know that Dr. Pratt was present.

The Court: I understand his testimony that Dr. Lange said that Dr. Pratt had said that. [1868]

A. Yes. Dr. Pratt had some controversy with Dr. Robinson before that and had stated to Dr. Lange that he thought he had paranoidal tendencies.

Q. (By Mr. McNichols): Now, approximately

(Testimony of Cameron Sherwood.)

when did this conversation take place, Mr. Sherwood?

A. I would say it was about the 23rd or 24th of May.

Q. And how do you fix that date?

A. Well, it was very shortly after his expulsion and by a letter in my file in which I wrote to Dr. Robinson stating that I hoped that they would expunge the thing from the record about this syphilitic patient.

Q. Well, then, proceed with your conversation with Dr. Lange.

A. I said, "The man appears to me a very brilliant man." He said, "He is brilliant," and he said that the society members were resentful because he had resigned from this medical service bureau that was set up to function with the society in some fashion and that he had denounced the medical service bureau rather actively and had corresponded with men all over the state, the medical society people, and he was rebellious about this medical service bureau.

Q. Did he mention anything about the grievance committee of the society?

A. He didn't mention anything about the grievance committee, [1869] as I recall.

Q. And what did you say to him then?

A. I advised him that I thought this complaint of the patient was something that should have been handled more delicately; that I thought if they would call him before a group of his brethren in

(Testimony of Cameron Sherwood.)

the profession; and I think I alluded to a similar situation in the bar association where we had had a complaint against a member of the bar and we had handled it in a little more diplomatic way.

Q. Well, then, subsequently, Mr. Sherwood, did you learn that Dr. Robinson had received notice of reinstatement in the AMA?

A. I, by coincidence, was operated on by Drs. Lange and Falkner on the 29th of May, a few days after this conversation. I had a sudden gall bladder attack.

Q. By Dr. Lange and Dr. Falkner?

A. Dr. Falkner and Dr. Lyman.

Q. Oh.

A. And so I was on the shelf until about September and I didn't know what went on after that. However, the next contact I had with Dr. Robinson, if I recall, was when he presented to me a day or so after he had received the telegram from the AMA reinstating him, and I wrote him a letter of congratulation. [1870]

Q. And what did you do after that?

A. He called on me and asked me if I could force the society to give him back his hospital privileges. I called Dr. Ralph Keyes, who I believe was an officer, and Dr. Keyes referred me to Mr. Fullerton of the medical service bureau.

Q. What did Dr. Keyes say?

A. To find out about when a meeting was going to be held to consider this telegram, as I recall.

Q. Did Dr. Keyes mention that to you?

A. Dr. Keyes stated that he had nothing signed

(Testimony of Cameron Sherwood.)

and that they were waiting for written confirmation of the telegram.

Q. And then what did you do?

A. I called Fullerton and Fullerton, I believe, told me the date that they were going to have a meeting, at which time they hoped to have written confirmation of the signature on the telegram.

Q. Were you acquainted with Mr. Fullerton?

A. I was acquainted with Mr. Fullerton. I talked to him, I think, several times incidentally about this matter.

Q. Mr. Sherwood, do you know Miss Mildred Curts?

A. I do.

Q. And when did you first know her?

A. She was a court reporter when I first came to Walla [1871] Walla in the Superior Court of this county. I think I knew her when I was a young newspaper reporter here in the 20's.

Q. Have you conducted cases in which she has been the reporter in the Superior Court?

A. I have; many cases.

Q. Did you have occasion in those cases to have her prepare a record?

A. I have.

Q. Of proceedings for you. And are you familiar with those records that she has prepared?

A. Yes.

Q. Did those records truly reflect all the proceedings that transpired in the court when she was taking the testimony?

Mr. Kimball: If the Court please, I object to

(Testimony of Cameron Sherwood.)

that question as not being material to any issue in this case.

Mr. McNichols: I will rephrase the question, your Honor.

Q. In the records which Miss Curts prepared, state whether or not there were errors in the transcript.

Mr. Kimball: I renew the objection, your Honor.

The Court: Are you trying to prove that Miss Curts is incompetent as a stenographer in order to corroborate your claim here that this was an inaccurate record in this [1872] particular case?

Mr. McNichols: Yes, your Honor.

The Court: Can you do that by specific instances of inaccuracies? I don't believe you can do that, can you, by showing that some record or——

Mr. McNichols: I will rephrase the question, your Honor, perhaps this way:

Q. Mr. Sherwood, do you know the reputation of Miss Curts in the community with respect to her ability as a shorthand reporter?

A. I would say——

The Court: Wait a minute.

Mr. Kimball: I am afraid that doesn't cure the objection that I am trying to make.

The Court: What is your objection, Mr. Kimball?

Mr. Kimball: That you cannot show that a particular transcript here involved is inaccurate by showing Miss Curts' reputation of what she did in some other instance over the past 20 years.

(Testimony of Cameron Sherwood.)

Mr. McNichols: Your Honor, the testimony here has been that Dr. Robinson complained. We are not making any effort whatsoever to involve Miss Curts in this thing, except it has become a vital issue as to her capabilities to report a procedure of this kind, and I think her reputation in this community among the lawyers bears upon that. [1873]

The Court: I think not. That is collateral. I would have to let them bring in a certain number of witnesses. How many should we have, six on a side, as to whether or not Miss Curts is a capable reporter. I think it is a collateral excursion. I will sustain the objection.

Mr. McNichols: We can do it in another manner and I will withdraw the question. No further questions.

Mr. Kimball: No questions.

(Witness excused.)

The Court: I think we may as well suspend now until 1:30. Court will recess until 1:30.

(Whereupon, the trial in the instant cause was recessed until 1:30 o'clock p.m., this [1874] date.)

* * *

NOEL B. EDWARDS

a defendant herein, called and sworn as an adverse witness by the plaintiff, was examined and testified as follows:

Direct Examination

By Mr. McNichols:

Q. Would you state your name, please, Mr. Edwards? A. Noel B. Edwards.

Q. And where do you reside?

A. 1254 Bell Street.

Q. In Walla Walla? A. In Walla Walla?

Q. What is your occupation, Mr. Edwards?

A. I am a salesman.

Q. For whom?

A. For Saxton Sewing Machine [1875] Company.

Q. You are a defendant in this action?

A. I am.

Q. You have been present in court during the proceedings off and on, have you?

A. Off and on. More off than on.

Q. You are the Noel Edwards to whom we have referred in the testimony?

A. That is correct.

Q. You are a son-in-law of Mr. Thomas Brooks?

A. That is correct.

Q. And you are the father of the child, Noeline Edwards? A. That's right.

Q. Now, Mr. Edwards, very briefly, referring you back to the first part of June of 1950, do you recall the day this incident occurred with respect to your child?

(Testimony of Noel B. Edwards.)

A. The actual day or date I cannot pin point.

Q. I think the date has been established as around the ninth of June, is that right?

A. Somewhere in that vicinity. I have a very poor memory.

Q. Were you home at that time?

A. No, I was not.

Q. Did you get home that evening?

A. Just what time I wouldn't know. It would probably be the latter part of the evening or late at night. I [1876] usually kept out pretty late at night.

Q. On that day, did your wife discuss with you the conversation she had had with Dr. Robinson?

A. She probably did, I just can't recall that off-hand.

Q. Referring you to Plaintiff's Exhibit No. 10, have you seen that before to your knowledge?

Mr. McNichols: This, your Honor, is the Edwards' complaint.

The Court: All right.

A. Yes, I am familiar with that now since these proceedings have started.

Q. Did your wife consult with you about filing this complaint?

A. I dare say she did. She never took anything in her own hands without first consulting with me. Just when it was, I just don't recall.

Q. Do you know when you first discussed it with her the possibility of making a complaint?

A. I, myself, don't recall when we first discussed

(Testimony of Noel B. Edwards.)

it what you consider a complaint. As far as we were concerned, it was just an inquiry.

Q. Oh, I see. Well, I was referring to it——

A. We didn't consider a complaint at any stage of the journey whatsoever.

Q. Did she tell you about the incident the same day that [1877] it occurred? A. Yes.

Q. And did she tell you substantially what appears in this document? A. Yes.

Q. You were familiar with it at all times on that factual basis?

A. Well, in my deposition that I gave just recently I got the cart before the horse. That happened around about five years ago, thereabouts, and I just get the cart before the horse. My memory wasn't too good, but I was familiar with the facts after having my memory jogged a little bit.

Q. Well, along that line, you say that you were familiar with these facts in the summer of 1950?

A. When that occurrence happened, yes, I was familiar with the facts, yes.

Q. Was it at your instigation that the complaint, whatever we call it, this notice was filed with the society?

A. Would you repeat that question?

Q. Was it at your instigation that this document or this complaint was made, if you want to refer to it as a complaint?

A. Well, I would say that after not getting the satisfaction from my wife seeing Dr. Robinson, I think it was by [1878] a mutual agreement.

(Testimony of Noel B. Edwards.)

Q. You concurred in it at that time?

A. Pardon?

Q. You concurred in the idea to make the complaint with your wife?

A. I daresay I did. I don't recall.

Q. Did you or she determine where she should go to make this complaint?

A. It was probably her, I couldn't tell you for sure.

Q. Do you know of your own knowledge to whether or not she talked to any official of the society or the bureau about it prior to going down there?

A. Well, to the best of my knowledge, she didn't. I wouldn't even know how she would know who to go to.

Q. Do you know one way or the other?

A. Well, since these proceedings have started, I would say no, she definitely didn't.

Q. Well, you mentioned in your testimony in your deposition Mr. Edwards, I will read a passage from your deposition which was taken in this case in January of 1956 and ask you if this is to what you had reference:

“Q. Isn't it possible that Dr. Robinson told your sister-in-law to gag the child, putting the finger down the throat so there would be [1879] regurgitation?

“A. Well, if he did, that was a totally different story to what was told me.

“Q. In any of the conversations, did anyone

(Testimony of Noel B. Edwards.)

recollect that he had told her that? A. No.”

Q. Is that to what you were referring?

A. As I stated previously, a short while ago, it was regards my deposition on that particular date and I think I mentioned in my deposition that I just got the cart before the horse there as regards what the Doctor did and did not say pertaining to the method of treatment to my youngster when she took this box of Ex-Lax.

The Court: You didn’t hear this conversation over the phone? A. No, your Honor.

The Court: All you could know is what you heard someone else say?

A. What my wife told me and my sister-in-law told me.

Q. (By Mr. McNichols): But by January of 1956 when this deposition was taken, was that the first time that you had the story as it appears in the complaint?

A. No, I had had the story prior to that when the complaint was made and at probably one of the hearings, the first hearing probably, or somewhere along the line.

Q. Well, then, your answer, “Well, if he did, that was [1880] a totally different story to what was told to me,” is not your testimony now?

A. Well, I am going to have to take that back. Yes.

Q. There was one other portion of your deposition, reading from Page 15:

“Q. Well, as a matter of fact, didn’t Dr. Robinson tell them to induce vomiting for the child?

(Testimony of Noel B. Edwards.)

“A. To the best of my knowledge, no.

“Q. Has anything ever been said about that?

“A. Well, we discussed it with my sister-in-law since this has come to a head the way it has and developed the way it has, that has been discussed, and between my wife, myself, my sister-in-law, and my sister-in-law is very emphatic at any time Dr. Robinson ever mentioned anything about vomiting, inducing vomiting.”

Q. Now, did you make that statement at that time, Mr. Edwards? A. I daresay I did.

Q. Do you also desire to change that answer at this time?

The Court: What is the purpose of this testimony, Mr. McNichols?

Mr. McNichols: Well, your Honor, Mr. Edwards appears [1881] all through this proceeding making statements and there are quite a number of contradictions in his own statements, and now perhaps to clear it up, it would clear it up if I could read briefly from the Plaintiff's Exhibit No. 104, which is the decision of the Washington State Grievance Committee——

The Court: Well, I suppose there would be no objection to your showing his making contradictory statements to show that the testimony he gave before the medical society was not correct.

Mr. McNichols: Yes, sir, and this particular one as I said from the document, agrees, “The testimony of Mr. Noel Edwards was definite that Doctor Robinson informed him that Mr. Brooks was suffer-

(Testimony of Noel B. Edwards.)

ing from syphilis. This testimony was not refuted and must therefore be accepted."

This matter was preliminary——

The Court: Of course, you could interrogate regarding anything that he has testified as to what Dr. Robinson said to him, but this case has many peculiar angles, but I was just wondering about the propriety of cross-examining somebody on what he had said on a prior occasion somebody else told him. You are cross-examining him on whether his hearsay statements today are the same hearsay statements as at the time of the deposition.

Mr. McNichols: Well, then, it may be [1882] collateral. I will get to the point.

The Court: We don't want to go out into the woods any farther than we have to in this case.

Mr. Sembower: That's right.

Q. (By Mr. McNichols): Did you, Mr. Edwards, prior to the time the first complaint was made by Mr. Brooks to the trustees on the eleventh of October, 1950, did you tell your father-in-law, Mr. Brooks, that Dr. Robinson, in telling you this story, had specifically told you that Mr. Brooks was suffering from syphilis?

A. Dr. Robinson called me——

Q. Well, perhaps you can answer my question.

The Court: The question is a little difficult to comprehend. You better read it to him again.

Mr. McNichols: I will rephrase the question, your Honor.

(Testimony of Noel B. Edwards.)

Q. Between the week end of October the ninth—first of all, I believe you had a conversation with Dr. Robinson, on Friday? A. No.

Q. Friday, or Saturday?

A. It was a Saturday morning. Yes.

Q. Was that the 8th or 7th?

A. I couldn't tell you whether it was the 7th or 8th of October, around about there. Yes. [1883]

Q. Well, now, you again had a conversation with him some time. Was it Monday?

A. On a Monday morning, approximately 8:30 or 9:00.

Q. Well, now, between the time you had those conversations and the eleventh of October, did you tell your father-in-law that Dr. Robinson had told you specifically that your father-in-law had syphilis?

A. I believe it shows in the earlier testimony where I conceded to the fact that Dr. Robinson didn't use that word, "syphilis."

Q. Well, can you answer my question?

The Court: Just a moment now. What he is asking is not what Dr. Robinson said, but what you told your father-in-law that Dr. Robinson said. Is that clear? A. That is clear.

The Court: Isn't that your question?

Mr. McNichols: That is what I want.

A. To be quite frank with you, I can't recall it.

Q. (By Mr. McNichols): You don't know whether you did or not?

A. I just can't recall right offhand, no.